

1 UNITED STATES BANKRUPTCY COURT
 2 NORTHERN DISTRICT OF CALIFORNIA

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4 In Re:) Case No. 23-30564
 5) Chapter 11
 6 THE ROMAN CATHOLIC)
 ARCHBISHOP OF SAN FRANCISCO,) San Francisco, California
 7 Debtor.) Thursday, November 9, 2023
 8) 1:30 PM
 9)
 10) DEBTOR'S MOTION FOR ORDER:
 11) (1) FIXING TIME FOR FILING
 12) PROOFS OF CLAIM; (2)
 13) APPROVING PROOF OF CLAIM
 14) FORMS; (3) PROVIDING
 15) CONFIDENTIAL PROTOCOLS; AND
 16) (4) APPROVING FORM AND MANNER
 17) OF NOTICE FILED BY THE ROMAN
 18) CATHOLIC ARCHBISHOP OF SAN
 19) FRANCISCO [220]

20 TRANSCRIPT OF PROCEEDINGS
 21 BEFORE THE HONORABLE DENNIS MONTALI
 22 UNITED STATES BANKRUPTCY JUDGE

23 APPEARANCES:

24 For the Debtor:

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20 Also Present: Archbishop Cordileone
21 Patrick Summerhays
22 Responsible Individual
23 Joseph J. Passarello
24 Chief Financial Officer
25 Paula Carney
Debtor's General Counsel
Paul Gaspari
Debtor's Special Corporate and
Litigation Counsel
Barron Weinstein
Debtor's Insurance Counsel

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18 Court Recorder:

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The Roman Catholic Archbishop of San Francisco

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1 SAN FRANCISCO, CALIFORNIA, THURSDAY, NOVEMBER 9, 2023, 1:32 PM

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3 (Call to order of the Court.)

4 THE CLERK: Calling the matter of the Roman Catholic
5 Archbishop of San Francisco.

6 THE COURT: All right. Let me get the appearances
7 from debtor's two counsel. And then I have a request about
8 other people who wish to be heard.

9 MR. PASCUZZI: Thank you, Your Honor. Paul Pascuzzi,
10 Felder, Stein, Fitzgerald, Willoughby Pascuzzi & Rios, for the
11 debtor Roman Catholic Archbishop of San Francisco. For the
12 record, Your Honor, on the Zoom, not that they need to be
13 brought on the screen, but Father Summerhays is participating,
14 Joseph Passarello, Paula Carney who's the general counsel. I
15 believe Mr. Gaspari, our special litigation counsel, just in
16 case we need them. I don't know that we will. And also Barry
17 Weinstein who's our special insurance counsel. Again, I don't
18 know that we'll need them, but just in case.

19 THE COURT: Okay. Mr. Katz.

20 MR. KATZ: Good afternoon, Your Honor. Ori Katz,
21 cocounsel to the debtor.

22 THE COURT: Mr. Blumberg?

23 MR. BLUMBERG: Good afternoon, Your Honor. Jason
24 Blumberg for the United States Trustee.

25 THE COURT: Then we have counsel for the committee,

The Roman Catholic Archbishop of San Francisco

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1 Ms. Parada?

2 THE CLERK: Oh, yes, Your Honor.

3 MR. PASCUZZI: It's probably Mr. Stang just to help
4 out.

5 THE COURT: To help out, huh?

6 THE CLERK: I don't see a Mr. Stang.

7 THE COURT: Well, counsel for the committee who wish
8 to be heard today, please raise your hand. And any counsel for
9 insurers who wish to be heard and speak, please raise your
10 hand. If you just want to observe, you don't have to do
11 anything. You're welcome to just do what you're doing. But I
12 need a hand up if you expect to be called upon.

13 So I have a J-I-S. Is that Mr. Stang? I recognize
14 his initials but --

15 THE CLERK: I believe so, Your Honor.

16 THE COURT: -- only in lowercase and with no picture.
17 All right. Mr. Stang, are you going to grace us with your
18 presence?

19 MR. STANG: Your Honor, I'm trying. My computer is
20 telling me I don't have a camera though I'm looking right into
21 it.

22 THE COURT: Well, you can see me, but that's okay.

23 MR. STANG: I can see you. I'm trying to make sure
24 you can see me.

25 THE COURT: Well, at the moment --

1 MR. STANG: I'm working on it, Your Honor.

2 THE COURT: -- I can't. I can't. Now I see a Ms.
3 Sugayan, but I don't know if you wish to be heard. So if you
4 wish to be heard and seen, turn on your camera and your
5 microphone or at least your microphone.

6 MS. SUGAYAN: Good afternoon, Your Honor. Kathy
7 Sugayan. I'm an attorney at Clyde & Co in the Chicago office.
8 And I'm coverage counsel for certain underwriters at Lloyd's,
9 London and London Market Insurers.

10 THE COURT: Okay. And Mr. Weiss?

11 MR. WEISS: Good afternoon, Your Honor. Matt Weiss on
12 behalf of Fireman's Fund Insurance Company, Chicago Insurance
13 Company, Westport Insurance Corporation, and Appalachian
14 Insurance Company.

15 THE COURT: So preliminarily, Mr. Stang, I'm going to
16 assume that you can hear me. I want to say for your benefit
17 and for debtor's cocounsel, I have looked quickly but not
18 deeply into the motion regarding 2004 exam and the debtor's
19 response. I have not taken the time to act on it. And I don't
20 expect either of you expected me -- or expecting me to act on
21 it today. And I don't expect to. What I am going to direct is
22 that counsel meet and confer just like we do in any discovery
23 disputes. And unless there's something urgent, I will expect
24 at the next regular archbishop hearing on November 30th, if
25 there are any issues that need to be resolved, I will take it

1 up. And I'll ask the debtors counsel to file a status report
2 on that discrete issue, say November 28th. But I again, I
3 don't need to have any discussion about it today.

4 MR. STANG: Your Honor?

5 THE COURT: Yes.

6 MR. STANG: I want you to know that I can hear you.
7 My IT department is in my office trying to fix the camera
8 issue.

9 And, Your Honor, our ex parte -- we did file it on ex
10 parte basis. I heard what you said. We are committed, as we
11 said in our papers, to working with the diocese, not -- the
12 archdiocese, notwithstanding the ex parte nature of it. But
13 obviously, you'll do what you're going to do.

14 THE COURT: Mr. Stang, you don't have to be on the
15 camera. I'm happy to have you just appear audibly. But again,
16 just to repeat, you're not here often, the other counsel are,
17 it has been my practice pretty routinely to enter 2004 orders
18 promptly, but I will not do it in this case, given the depth of
19 the breadth of the request and the opposition and the fact that
20 there's no reason to not worry about the -- excuse me, there's
21 reason to assume that there will be a fruitful meet-and-confer
22 and progress on that.

23 And one other point, Mr. Stang. Again, this is
24 just -- it's semantics, but I want to make sure at least from
25 what Mr. Katz and Mr. Pascuzzi have mentioned previously, the

1 debtor the formal name of the debtor is the Archbishop of San
2 Francisco, et cetera, not the archdiocese. And so although
3 it's a little bit awkward to identify an individual who isn't
4 personally in bankruptcy but he is as archbishop corporation
5 sole, so I'm not asking you to change anything but just be
6 mindful that the terminology that I'm using, as I learned from
7 debtor's counsel, is the debtor is the archbishop, not the
8 archdiocese.

9 Now, turning to the subject for today, Mr. Pascuzzi, I
10 appreciate the last-minute filings, lengthy. Unfortunately,
11 they are so lengthy that I didn't get to them. And yet I was
12 able to look enough. I mean, one of the things that maybe
13 there are some judges that are newer at this than I am and I
14 don't do well on a quick read of a hundred page red line or
15 whatever length of the red line it is. And so I was able to
16 glean a few of the responses to the comments that I have made
17 and some of the things that were stated in what you submitted
18 your status update report. I'm prepared to just hear from all
19 counsel who want to be heard on any matters that are still in
20 dispute about. the things that are on the docket for today.

21 And by the way, a number of the counsel representing
22 insurers apparently do want to be heard. So if it's on that
23 subject that are part of what you've reported, then that's
24 fine. And if it's on something else, that that's also fine.
25 We'll just take them in order.

1 So I ask you, Mr. Pascuzzi, unless your colleague,
2 Brother Katz, is in charge of this aspect, to let me know what
3 you believe are still the open issues and maybe start by
4 telling me which of the points that I raised in my comments, if
5 any, are not agreed to by your client and need to be discussed
6 in any detail.

7 MR. PASCUZZI: Okay. Your Honor, I think if it works
8 for you, if we could go through the red line of the proposed
9 order first.

10 THE COURT: Well, it works for me, but it's a little
11 slow. I mean, in other words, I can do it. But as I say,
12 sometimes going through red lines is tedious because so much of
13 it can be kind of so routine. But --

14 MR. PASCUZZI: Yeah. Well, what I can do -- I'm
15 sorry.

16 THE COURT: No, you go ahead.

17 MR. PASCUZZI: It starts at page 19 of the docket 297
18 we filed yesterday. And I do apologize that it was filed late.
19 And I do recognize there are a lot of pages. But we really
20 thought it important to get on the docket for everybody's
21 review the clean and red line versions.

22 I don't think there are a ton of issues that we need
23 to deal with, but there are a few.

24 THE COURT: Okay.

25 MR. PASCUZZI: And I hope to be able to highlight them

1 for everybody and then step aside and let the committee and the
2 insurers provide their input. And if I skip anything, of
3 course they can mention it.

4 But as to the proposed order, we did add references to
5 the limited objections that were filed and the Court's
6 preliminary comments.

7 THE COURT: Well, Mr. Pascuzzi, let me interrupt you.
8 I'm not -- as you know from prior experience, I'm old
9 fashioned. I like to have hard copies. I can make a hard
10 copy, but I haven't taken the time to. I've got the red line
11 of the order on my screen. And I can go through it with you.
12 But we don't need to waste time with all the edits that have to
13 do with titles and local references to rules and dates of
14 hearings. So feel free to go right to where you think there's
15 something worth commenting, which appears to be on page 21 at
16 paragraph 2. But I'm with you, and I will go down it with you
17 as you walk through every provision. Just skip the
18 boilerplates.

19 MR. PASCUZZI: Yeah. And actually, Your Honor, I can
20 cut to the chase. I think where the first issue comes up is in
21 paragraph 17. And that issue is in paragraph 17C, which I
22 believe is on page 27, the docket page 27. And it has to do --

23 THE COURT: Okay. I'm there. I'm there.

24 MR. PASCUZZI: It has to do with the confidentiality
25 agreement and who's going to sign the confidentiality

1 agreement. Is there one person that can sign on behalf of
2 entities, or do we need each person to sign?

3 And I believe there's been some meeting and conferring
4 among the debtor and the insurers today on that issue. It's
5 somewhat related to also in in 17E4, but maybe I should let
6 either Mr. Stang or one of the insurance counsel tell us
7 whether they've agreed on any language or what their particular
8 issues are.

9 THE COURT: Let me call on Mr. Stang on this first,
10 but give me one second, Mr. Stang. I want to read 17A. One
11 second here.

12 Okay, go ahead, Mr. Stang.

13 MR. STANG: Thank you, Your Honor. And I've
14 discovered what the problem is with my camera. Over the
15 weekend, my firm went to a cloud-based server, and apparently
16 the cameras on our computers were not reset. And I would have
17 had to have left the hearing and come back on. And I didn't
18 want to do that. So next time you'll see me.

19 THE COURT: Nothing personal. I don't have to see
20 you.

21 MR. STANG: All right. So, Your Honor, the issue is
22 whether someone has to personally sign a confidentiality
23 agreement to become a permitted party. The order provides that
24 the law firms do not need to have each lawyer and each employee
25 sign. So for my firm, I can sign on behalf of anyone in my

1 firm who has access to the -- and therefore can have access to
2 these documents.

3 The insurers and their immediate affiliates also do
4 not have to have each person sign the confidentiality agreement
5 for the insurers to become permitted parties. And that is
6 spelled out -- that is spelled out in paragraph D on my page --
7 PDF page 28. I'm in the red line. And it talks about the
8 insurers and. And --

9 THE COURT: I have paragraph D, 17D on my screen.

10 MR. STANG: Okay. So the question is, if an insurance
11 companies hires an outside party to assist it in its analysis
12 of the claims, should that outside vendor be allowed to sign on
13 behalf of everyone in the company or should everyone who has
14 the -- can contact -- touches the forms, if you will, virtually
15 or otherwise, whether they have to personally sign it.

16 The precedent that the debtor attached from Santa Rosa
17 and Oakland says that the natural person must sign. Why is
18 this important to us? There have been, in other cases,
19 breaches of the confidentiality agreement when the insurer has
20 contracted with a vendor. The litigation regarding the nature
21 of the breach and the proper remedy for that breach is ongoing
22 in the Rockville Center case, is ongoing in the Rochester case,
23 and I believe in Camden. It's throughout several of the cases
24 in New York.

25 I don't think anyone on this call in this hearing

1 would challenge that the confidentiality must be maintained.
2 These are the most heinous things that have happened to our
3 survivors. It's the risk of family members discovering when
4 they haven't been told by the survivor or their community
5 discovering when they haven't shared it with the community,
6 leads to all sorts of damages to the survivor. And we may get
7 into more of the data about survivor experiences another time,
8 Judge. But I can tell you that suicides are not uncommon in
9 this population.

10 And so we want to avoid -- and I think everyone wants
11 to avoid breaching. And we're not trying to set anybody up
12 that we can point a finger and say, oh, you've breached. But
13 if there is a breach, we need to understand who might be the
14 person responsible. Law firms ordinarily and typically
15 maintain all sorts of safeguards to be sure that the
16 confidential information that we have is not shared. It was
17 (audio interference) reinsurers and their administrators have
18 similar protection, because why? We are prepared to simply
19 have the institution -- someone sign on behalf of the
20 institution.

21 But I don't know if a vendor, much like the vendor in
22 Rockville Center, who got information that it was not allowed
23 to receive because it had not signed a confidentiality
24 agreement and then that vendor shared confidential information
25 with an entity that wasn't even within the scope of the

1 confidentiality permitted parties, that happens. Stuff
2 happens. And it's important to us to have accountability for
3 the people who are seeing the documents.

4 Now, the insurers say in their opposition, well, what
5 about the person that's writing a check to a survivor? Does
6 that person have to sign? Well, Your Honor, I have handled the
7 vast majority of cases since 2004 on behalf of committees. My
8 colleague, Brittany Michael, has handled pretty much the
9 balance of them when she was at another law firm. Insurance
10 companies don't write checks to survivors in Chapter 11 cases.
11 They write checks to a settlement trust.

12 They talk about an IT department that might have
13 access to forms when they're working on the servers. Yeah,
14 exactly. I want to know who that person is, because if there's
15 a breach, that person may have been the one who breached.

16 So this is about protecting the confidentiality that
17 everyone acknowledges is important and ensuring that for
18 unknown vendors who we can't be -- don't know what protocols
19 they have in place to protect this information should be
20 transparent about who has access to it. And that's how we view
21 the matter, Your Honor.

22 THE COURT: Well, let's back up for a minute, Mr.
23 Stang. If an IT person in your law firm breaches, then your
24 law firm has to pay the consequences. And presumably you will
25 take out the consequences on the wrongdoer. But the debtor --

1 the only people who know of the individual in that IT
2 department will be you. But that individual wouldn't have had
3 to sign anything, right?

4 MR. STANG: That is correct, Your Honor.

5 THE COURT: Okay.

6 S1: So now go to the insurance company. So the
7 insurance company has lawyers and executives and IT
8 personnel. And I take it you're not asking them
9 individually to do it either but rather the insurance
10 company itself. And so under respondeat superior type
11 principles, if a if an employee, whether it's an IT person
12 or -- it doesn't matter who it is, an employee of an
13 insurance company discloses things improperly, then that
14 person will be accountable. But the insurance company
15 will be on the hook for any kind of liability. Same
16 thing, right?

17 MR. STANG: Yes, Your Honor.

18 THE COURT: Okay. So then who are you -- who are you
19 extending this to? The insurance company hires ABC claims
20 analyst or some other vendor. What's wrong with the same
21 principle of making sure the vendor commits but why does the
22 vendor have to identify each and every employee of that vendor?
23 I don't understand why it should be different. If the low
24 level -- I leave out low level. If someone other than the
25 responsible officer of that vendor breaches, it's his or her

1 culpability, but the vendor is also liable under the same
2 principles. Why is it different than for a nonexecutive person
3 of a vendor to be treated differently from a nonexecutive
4 person of an insurance company or a law firm?

5 MR. STANG: Your Honor, we believe that law firms and
6 insurance companies have -- understand the gravitas of what
7 they're dealing with and understand -- and have protocols and
8 protective measures in place because they all every day deal
9 with sensitive information.

10 We don't know what outside vendor an insurer will --
11 or anyone for that matter will employ. We have no idea what
12 protocols they have in place to ensure that when they're told,
13 hey, this is confidential, that the measures will be taken to
14 ensure that. And so while signing the agreement in and of
15 itself does not mean that John Doe -- that the protocols exist.
16 John Doe employee has signed, but we have no idea what the
17 protocols are. We seem to be satisfied if John Doe has signed.
18 And the reason we're satisfied is because John Doe has read the
19 agreement. John Doe, by reading the agreement, acknowledges
20 his understanding or her understanding of the importance of
21 keeping confidentiality.

22 So for us, there are certain institutions which we are
23 comfortable have protections in place based on their
24 experience. But not knowing who these vendors are and not
25 knowing what protocols may be in place with those vendors, we

1 feel that a personal signature will bring home to that person
2 the importance of the confidentiality.

3 THE COURT: Is it a fair statement that a number of
4 these insurance companies that are involved in the Archbishop
5 of San Francisco case have also been involved in other
6 archbishop or bishop cases and have also employed third-party
7 vendors and have protocols? We don't assume that the universe
8 of insurance companies in this case are different from many
9 other cases. Should we assume that?

10 MR. STANG: Your Honor, the insurance companies
11 involved in this case, I can't say all of them, but many of
12 them are regular players in these cases.

13 THE COURT: Right. That's what I --

14 MR. STANG: And that was my point about --

15 THE COURT: That's what I assumed.

16 MR. STANG: -- mentioning -- well, but, Your Honor,
17 that was my point of mentioning to you the confidentiality
18 breach in Rockville, Camden, and at least Rochester, if not
19 also Buffalo. The insurance company utilized a vendor, an
20 outside vendor, to analyze whether certain claims could be
21 fraudulent. Now there was a breakdown by that insurance
22 company because that vendor, while within the scope of
23 permitted parties, had not actually signed an agreement. So
24 when they sent that information over to that vendor, they
25 messed up. That vendor subsequently shared some of that

1 information with another insurance carrier who is not involved
2 in those cases at all because they're trying to match claims to
3 see if there's a fraudulent claim.

4 And so did the insurance company -- in our opinion,
5 this is subject to discovery. The subject of matters pending
6 before the Court. But the insurance company in that case has
7 acknowledged that the initial vendor they employed had not
8 signed the confidentiality agreement. There's no dispute about
9 that.

10 THE COURT: But doesn't that --

11 MR. STANG: (Indiscernible) --

12 THE COURT: May I stop right there? Can I stop right
13 there? Can I also assume that the insurance company that
14 didn't vet its vendor and maybe the vendor itself probably has
15 some pretty measurable damages that might have to be paid
16 either to the individual survivor or perhaps the particular
17 religious institution that's in the bankruptcy. Should I
18 assume that?

19 I guess what I'm getting at, Mr. Stang, is if a person
20 of -- an irresponsible person who wants to intentionally or
21 even carelessly disclose confidences, I don't know how having
22 an individual person, a nonexecutive person signing a document,
23 changes the outcome. If Joe Schmoe of XYZ Vendor does
24 something wrong, there are consequences. But it would seem to
25 me that the consequences fall also on the vendor for

1 responsibility under the same principles.

2 What I'm trying to do is not question your intentions
3 here but rather the scope of it. How far does this reach?
4 Because if the vendor calls up a sandwich delivery guy to bring
5 lunch over while the people are meeting, does the sandwich guy
6 have to sign a confidentiality agreement? It seems to me it
7 gets a little bit convoluted and complex.

8 MR. STANG: Well, Your Honor, look, the consequence
9 between the employee and his or her employer is one thing. I'm
10 thinking about the consequence of the survivor if there's a
11 breach.

12 And using your example -- or a janitor is cleaning up,
13 you know what, when you leave that day, you should be putting
14 those claim forms in a secure place --

15 THE COURT: Right.

16 MR. STANG: -- and not leaving them on your desk.

17 THE COURT: Correct.

18 MR. STANG: And so I appreciate what you what you're
19 saying. I really do understand it. But from our perspective,
20 when a vendors employee is told, hey, you know, this stuff is
21 confidential, don't let anybody see it versus that person
22 having to read -- it's not a long agreement; it's only two or
23 three pages -- and they have to read it and sign it, that
24 brings home in a very different way the significance of what
25 they're working on. And it also ensures E-N, ensures, that if

1 there is a breach, at least at that level of employment where
2 we think it's more likely than in the case of the ones where
3 people can institutionally sign, that we can find out who might
4 be in the line of people that should be asked, hey, were you
5 careless, did you intentionally do something.

6 So that's what this is about, Judge. We don't see it
7 as very burdensome. There are lots of words about, oh, this is
8 terribly burdensome. Well, no one says why. I mean, just have
9 them read the agreement and sign it.

10 THE COURT: Well, Mr. Stang, again, I don't want to
11 create a problem where none exists. And I don't question your
12 motives here. I'm questioning the janitor who comes in to
13 clean the office of a person who works for the vendor who maybe
14 doesn't even speak English is being asked to sign a form that
15 he or she doesn't even understand. And I'm not assuming that
16 janitor intentionally is going to breach a confidence. But
17 having that person sign a document that maybe isn't even in his
18 or her native language is almost meaningless if that person
19 even accidentally throws the thing out and it falls into hands
20 that then it's misused.

21 But again, rather than go off on a hypothetical, let
22 me go back and find out from Mr. Pascuzzi or the insurance
23 representatives what they say because I'm neutral about it. I
24 want to do the right decision, but I don't want to create
25 something that's not workable.

1 So, Mr. Pascuzzi, is this an issue for you or is it
2 simply perhaps for the insurance companies?

3 MR. PASCUZZI: Your Honor, I think you should hear
4 from the insurance companies. Certainly, the need for
5 confidentiality is a valid concern. And the practical issues
6 are also valid. But I think I'd defer to the committee and the
7 insurance companies on this particular issue.

8 THE COURT: Okay. And I think we picked up one
9 counsel who didn't identify himself first. Is that Mr.
10 Frankel? Are you also representing for one of the insurance
11 companies?

12 MR. FRANKEL: Yes, Your Honor. I'm representing
13 Century Indemnity, Pacific Indemnity, and Westchester Fire.

14 THE COURT: Okay. So we have three different
15 attorneys representing insurance companies on the screen. Who
16 gets the duty on this issue?

17 MR. WEISS: Your Honor, I'll --

18 THE COURT: Mr. Weiss?

19 MR. WEISS: -- take the first bite if that's okay. As
20 I said, I represent Fireman's Fund, Chicago Insurance,
21 Westport, and Appalachian Insurance Company.

22 The issue here -- and we have others that we would
23 like to address later, especially things that came up in the
24 red line that weren't in the previous version. But with
25 respect to this issue, which we did brief, this is just about

1 making -- finding the balance between protecting the
2 confidentiality of the proofs of claim from survivors and
3 making something that's administratively workable and that all
4 the parties are able to adhere to, make sure all relevant
5 parties that might have access to the information are aware of,
6 but not create something that is so challenging or burdensome
7 that insurers or other parties could be in violation of this
8 order almost immediately.

9 In some ways, this is broader and more protective than
10 what the committee wants. They want every single individual
11 employee of any third-party vendor to sign an agreement saying
12 they're familiar with the confidentiality protocols. We're
13 saying any vendor needs to have someone sign the agreement.
14 We're not questioning that. But they can sign -- just like the
15 law firms and just like the insurers, they can sign on behalf
16 of the company. They're taking responsibility on behalf of the
17 company for what happens by the company's employees.

18 We have also offered to the committee during our
19 meet-and-confer today to add some language saying that they
20 will inform any employee who they reasonably think might have
21 access of the confidentiality protocols. And we think that
22 would further address any concern about this information being
23 improperly disclosed.

24 But the bottom line is there's just no need to collect
25 potentially hundreds of signed confidentiality agreements from

1 people at all levels of various organizations, many of whom we
2 have no idea now who might have to come across the claim. As I
3 said, it's not -- we're not talking about maybe people that are
4 primarily focused on reviewing claims. But there are plenty of
5 other situations where people may come across not only the
6 claim but also confidential information. That's another thing
7 that was added into this new version. It's now permitted
8 parties are restricted from sharing not only the proofs of
9 claim forms but also confidential information which is defined
10 in footnote 5 as any information contained in a confidential
11 survivor proof of claim form. So even if --

12 THE COURT: So Mr. Weiss, am I correct that it seems
13 to me that the two critical documents for sure are the proof of
14 claim and the supplemental information, those two? And then
15 perhaps if there is either formal or informal discovery
16 directed at a particular claimant, that goes beyond one or both
17 of those other documents.

18 But is there some other kind of situation that there
19 might be yet other information that would come up some other
20 way?

21 MR. WEISS: No. Well, the way the order as proposed
22 now says would be any information contained in a confidential
23 survivor proof of claim form. There's limited exceptions if it
24 was otherwise publicly known.

25 THE COURT: Okay. But what I'm getting at is that

1 what if there's a letter, what if there's something that
2 doesn't fit those definitions? The point is, in my sense about
3 this -- I mean, it's well established that I don't have
4 experience in other church bankruptcies except the Portland one
5 that I was involved in early on, briefly as a mediator. So I
6 don't pretend to have the expertise that all of you and Mr.
7 Stang have. But what I'm saying is that it strikes me that the
8 claim and the voluntary supplement are the two principal
9 documents, and there may be others, but they're probably all
10 within that same category of things. They are information that
11 a claimant must submit if he or she expects to participate in
12 this bankruptcy. They have to do anything if they don't want
13 to participate or be compensated about.

14 But can you give me an example of -- without naming
15 actual companies, what an example of a kind of vendor that
16 we're talking about?

17 MR. WEISS: Yeah. We talked about claims processing.
18 And I know Mr. Stang said he's not aware of any situation where
19 an insurer directly paid claimants. I believe that has
20 happened before. And just because it is not -- maybe even if
21 that -- taking his argument is true isn't the norm in a
22 dioceses case, maybe that there's nothing precluding it from
23 happening in this case.

24 THE COURT: No. But this debtor, like the Oakland and
25 Santa Rosa cases locally and I'm sure in the other church cases

1 around the country, there typically are claims administrators
2 hired by the debtor, and presumably the debtor has protocols in
3 place that extend to that person. Do the insurers higher their
4 own claims processors that do things like that?

5 MR. WEISS: Well, or there's other separate entities
6 that handle the claims administration or claims processing.
7 That's another --

8 THE COURT: But do they -- but are they handling it on
9 behalf of the debtor or separately on behalf of the insurer?

10 MR. WEISS: On behalf of the insurer.

11 THE COURT: Okay. All right. So what do you do if
12 it's a large company that has hundreds, if not thousands of
13 employees that come and go? And today one of them might be
14 employed and the next day might be gone and a new employee
15 comes on at every level? Is that -- that's the likelihood,
16 right?

17 MR. WEISS: Well, I think the first response to that
18 is that it shows you how unworkable it would be to require
19 every single one of those people to sign an agreement.

20 THE COURT: But having the vendor sign obligates them
21 as a legal matter.

22 MR. WEISS: Right.

23 THE COURT: And what the janitor or the temporary
24 employee who doesn't speak English does obligates and commits
25 the vendor under --

1 MR. WEISS: Correct.

2 THE COURT: -- any typical principles, right?

3 MR. WEISS: That's the idea. And they -- I think
4 there are -- you could have language in there that would have
5 them share the protocols with anyone who they reasonably
6 believe might come in contact with the claims within their
7 company to address.

8 THE COURT: Well, yeah, but the janitor might not
9 reasonably be in that category. So I would assume that that if
10 I'm in charge of the claims department for the Archbishop of
11 San Francisco case and I have a trusted employee, I tell that
12 employee you're bound too. But if the employee says, by the
13 way, we have a new janitor on duty tonight, we don't
14 necessarily assume that that janitor is going to have the
15 information or be exposed to that information because we assume
16 that the employees will safeguard it, right?

17 MR. WEISS: Correct. Well, I mean, I think that's
18 more of a reason why you need an agreement covering the whole
19 company as a vendor as opposed to an individual by --

20 THE COURT: Right. And you're agreeing to that. But
21 you seem to be agreeing to that.

22 MR. WEISS: Well, I'm arguing why you don't need --
23 the janitor should not --

24 THE COURT: Yeah, no. I think we're on the same page.

25 MR. WEISS: Yeah.

1 THE COURT: Mr. Stang wants it to be as broad as
2 possible. I believe I'm agreeing with you that if XYZ company
3 is the vendor that your client, Fireman's, uses to do whatever
4 it does, first of all, assume that Fireman's has chosen that
5 vendor to do something that it's necessary for that vendor to
6 have this information and you're arguing that that vendor will
7 be obligated and therefore we don't have to worry about the
8 janitor or even the responsible employees of that vendor
9 because the vendor will commit to inform the responsible
10 employees.

11 Can you tell me if you know, or Mr. Stang, has been
12 the resolution of this issue in Oakland and Santa Rosa?

13 MR. STANG: Your Honor, in both cases -- and I can --
14 based on the request for judicial notice, I can point you to
15 exactly where it appears in the request for judicial notice,
16 both in Oakland and in Santa Rosa, a natural person is required
17 to sign.

18 THE COURT: Every one of them?

19 MR. STANG: Well, understand, Your Honor, it's not --
20 first of all, the notion that hundreds of people will be
21 touching these files is in itself troubling. That's what
22 Mr. -- it says Weiss, but I thought you said Weinstein. But
23 anyway, the idea that hundreds of people are touching this is
24 like, wow, I had no idea it would be hundreds. This is about
25 someone who has -- who's handling the file.

1 THE COURT: Yeah, no. I understand.

2 MR. STANG: But Santa Rosa -- to answer your
3 question, Judge, Santa Rosa and Oakland both say that outside
4 of that institutional group that we talked about, natural
5 persons have to sign. And I don't know if these carriers
6 fought it like this in the other two cases, but that's what the
7 orders say.

8 THE COURT: Well, I don't want to get into what they
9 did. Mr. Weiss and you, Mr. Stang, weren't in my recollection
10 at the first hearing. And I made it very clear to debtor's
11 counsel and anybody else that I didn't see we should have a
12 different procedure or a different rule in place because
13 someone suffered abuse in Oakland versus in Santa Rosa or in
14 San Francisco. I mean, it just makes no sense. What happened
15 in Buffalo or Poughkeepsie, New York is bad enough. But to me,
16 the Greater Bay Area, it happens to an accident of perhaps of
17 history of why it's three different Catholic diocese instead of
18 one, which it was historically long time ago. And to me, it's
19 offensive or troublesome to think that a victim in Oakland or a
20 survivor in Oakland would be treated differently from a
21 survivor in San Francisco.

22 So I'm inclined to go with the Oakland and Santa Rosa
23 procedure to be consistent on this. But I guess, Mr. Weiss,
24 and I'll say to you, it seems to me that this isn't a question
25 of having every employee of this vendor sign something. It's

1 having the employees who are entrusted and expected to have
2 access to this information sign something. And so my
3 non-English-speaking janitor shouldn't have to sign because he
4 shouldn't or she shouldn't be exposed to the document in any
5 way.

6 Am I right, Mr. Stang? I mean, if Mr. Smith or Mr. X
7 is an employee of the vendor and Ms. Y is his trusted
8 colleague, they perhaps should sign. But they don't have to
9 get a signature from the janitor who's on -- comes in and
10 cleans the office at night.

11 MR. STANG: We would not expect that, Your Honor.

12 THE COURT: But you would expect that Mr. Smith and --
13 or Mr. X and Ms. Y, since they are being entrusted and expected
14 to have access to the information, should be obligated. That's
15 consistent with Oakland and Santa Rosa?

16 MR. STANG: Yes, Your Honor. I would expect, given
17 that they signed something, that when they leave at night, they
18 would put those documents in a drawer.

19 THE COURT: Well, no. I understand.

20 MR. STANG: Locked drawer.

21 THE COURT: Where they where they leave it is --

22 MR. STANG: That's up to --

23 THE COURT: -- it's a different issue. The question
24 is, if the information gets out and it turns out it got out
25 because the janitor got it and the janitor got it because the

1 janitor said Ms. X left it on her desk, then Ms. X perhaps has
2 some personal culpability. But certainly the vendor ought to
3 have some culpability just again, under the principles of
4 respondeat superior.

5 Mr. Weiss, It seems to me that, well, consistent with
6 what I believe is an important principle to follow here, I'd be
7 inclined to go with the way Mr. Stang Explains it, and assume
8 that that your client and the similar insurers have enough --
9 and I don't mean to say this incorrectly. I will presume that
10 they are responsible of course and that they are going to make
11 sure their vendors are responsible and that their vendors act
12 responsibly and so on.

13 I see Mr. Frankel wishes to be heard on this. So
14 Frankel, on this subject?

15 MR. WEISS: Your Honor, can I respond quickly to --

16 THE COURT: Well, yes. But he did have his hand up.
17 Go ahead, Mr. Weiss.

18 MR. WEISS: Okay. Just real quick. I mean, on the
19 issue of Oakland and Santa Rosa, this is being raised now
20 because what we've seen in other cases recently since those
21 orders were negotiated was efforts by committee counsel in
22 cases to try to play, I'd say, gotcha with insurers if they
23 based on individual employees not signing confidentiality
24 agreements. And this is really an effort to preserve the
25 confidentiality by not making it a trap for the unwary by

1 creating opportunities to say, well, this person didn't sign
2 it, so there's a violation. I think -- that's not the purpose
3 of these agreements.

4 And yes, I mean, had we known that that was a
5 possibility when Oakland and Santa Rosa were being negotiated,
6 I think we would have pushed there too. But it's just a --
7 it's a new issue that's come up recently.

8 THE COURT: But Mr. Weiss, can you -- again, without
9 unless you want to disclose particular vendors. I'm not asking
10 you to, but you must know what vendors your client uses and
11 will use. And I guess the question I would have, if there is
12 such a known vendor, how many human beings are we likely to
13 assume will have access to this information? I assume it's a
14 small number and should be a small number.

15 MR. WEISS: Yeah. I don't -- I mean -- I didn't say
16 hundreds and hundreds of people are going to be touching it.
17 But the part of this situation is you don't know necessarily
18 for somebody doing IT work -- I mean, theoretically, every
19 person that does IT work might have to sign it because you
20 don't know who's going to go in and need to work on somebody's
21 computer that might have -- where that information might be
22 secured or somebody that's handling the shredded documents
23 file. You don't know ahead of time who's going to be doing
24 that. So the only way to --

25 THE COURT: Or the person who delivers the sandwiches

1 to drop on drops off the sandwiches happened to see a form on
2 the desk. We don't know that that person is going to do it
3 either. But we all seem to agree that -- I seem to agree. I
4 don't think Mr. Stang would assume the sandwich delivery guy
5 has to sign the form.

6 MR. WEISS: Well, I wouldn't call the sandwich
7 delivery guy a vendor associate.

8 THE COURT: No. But he has access. He comes onto the
9 premises into the office of a vendor. Well, let's see what Mr.
10 Frankel wants to add.

11 MR. FRANKEL: Yeah, just a couple of things, Your
12 Honor. I don't want to be duplicative. But first of all, I
13 think it should be clear that the current language in the
14 proposed order is quite different from what Mr. Stang is
15 describing. The current language in the order says only the
16 law firms are required to sign a single confidentiality
17 agreement. Everybody else, including insurance companies and
18 their employees, have to get individual signatures from each
19 natural person. So at a minimum, that would need to be changed
20 to reflect the new agreement and understanding.

21 But stepping back, insurers are governed by the
22 insurance code in California which requires that this
23 information has to be kept confidential. And so as a practical
24 matter, the mediations and the underlying litigations in which
25 insurers participate, insurers don't -- as a practical matter

1 usually don't even sign the protective orders, let alone
2 individuals, because everybody understands that, number 1,
3 insurers have an obligation to maintain the confidentiality.
4 And the claimants understand that nobody's going to get paid if
5 they don't have that information.

6 And so there are vendors -- for example, I think the
7 number of claims in this case, it's not going to be like the
8 PG&E case, but it'll be significantly a larger number of claims
9 than Oakland and Santa Rosa. And there are other claims that
10 insurers have to track, and they add up. And the insurers have
11 a responsibility to not just evaluate the claims but to track
12 things like the abuse alleged period so they know which
13 policies are potentially implicated. And there's a lot of
14 data, a lot of information that, yes, everybody understands
15 needs to be maintained as confidential. But requiring
16 individuals even at a vendor is particularly onerous.

17 And there's another issue here, Your Honor, besides
18 having individuals at the vendors which I think easily could be
19 advised of the protections in the protective order and the
20 confidentiality order. There are a couple issues. Number 1 is
21 you're not just asking individuals to sign a form. All the
22 personal individuals that sign the form are submitting to the
23 jurisdiction of this Court. So to require even if it's a dozen
24 employees that are working for a vendor in Philadelphia to
25 submit to the jurisdiction in their individual capacity in this

1 Court, it is fairly significant.

2 Another issue is that while my law firm might be able
3 to sign -- if I go out and hire -- my client wants to hire a
4 consulting expert, not just to look at testifying expert but a
5 consulting expert that would work on a privilege basis, it
6 would be work product, I normally in any other litigation
7 wouldn't have to disclose to other parties the identity of the
8 consulting expert. And what Mr. Stang is suggesting, even
9 under his revised proposal, not just that all individuals at
10 vendors and consultants have to sign, but even if the entity
11 has to sign, we have to disclose that to the committee, to the
12 debtor. And I think at least with respect to like consulting
13 experts that might have a role in terms of analyzing and
14 assisting the insurers and their counsel understand the
15 validity and the amount of the claims It encroaches on some
16 work product and confidentiality issues. The way parties --

17 THE COURT: But I'm confused because I thought we
18 agreed that if your law firm hires somebody to do things to
19 work on the case, they don't have to put that -- they don't
20 sign a separate agreement. You or some member of your firm
21 committed to your firm, and that commits everybody under it and
22 assumes any direct agents of your firm as well, right? Why
23 wouldn't it?

24 MR. FRANKEL: No, I agree with that, Your Honor.

25 THE COURT: Okay.

1 MR. FRANKEL: But I think what I hear from counsel for
2 the committee is that, and I may have been wrong about this,
3 but if my firm hires a consulting expert, that's not an
4 employee of my firm. That needs to not only be signed by all
5 the individuals, but whoever signs the agreement, even if it's
6 the firm itself, not the law firm, but the consultant that
7 needs to be disclosed. Even if it's --

8 THE COURT: Disclosed even just the signing, the
9 hiring. Mr. Stang, is that is that what you believe?

10 MR. STANG: Your Honor, much like we have to disclose
11 every expert we hire and the debtor has to disclose every
12 expert they hire, the companies who are contractually allowed
13 to direct the defense of the claims and who has a -- and to
14 whom the Archbishop owes an obligation to cooperate in the
15 defense of claims, yes, they should be under no further
16 protection of the confidentiality of who they're hiring than I
17 am or Mr. Katz or Mr. Pascuzzi.

18 THE COURT: But what --

19 MR. STANG: Let's have a --

20 THE COURT: But I'm still --

21 MR. STANG: Let's have a level playing field here.

22 THE COURT: But I'm still confused. If your law firm
23 hires someone to work on the Archbishop of San Francisco case,
24 do you have to disclose the hiring to anybody?

25 MR. STANG: How did I get them paid, Your Honor?

1 THE COURT: I didn't ask how you get them paid.

2 MR. STANG: But the answer is yes.

3 THE COURT: Well, first of all, they're hired. But
4 wait a minute. If you if you if you're preparing for just
5 traditional litigation, not this case but any litigation, when
6 you hire someone on your team, you don't have to disclose. You
7 hire a new associate at your firm. You don't have to disclose
8 who that associate is, right? And --

9 MR. STANG: Well, we're not talking about --

10 THE COURT: And --

11 MR. STANG: Oh, sorry.

12 THE COURT: Well, no, no. But if you hire a contract
13 lawyer to come to the Pachulski Stang firm, you don't have to
14 disclose it in every case because that person is part of your
15 firm, an agent of your firm.

16 So what would happen in this case if your firm hires a
17 new associate to work on the Archbishop of San Francisco case?
18 Who are you --

19 MR. STANG: They're an --

20 THE COURT: -- disclosing it to? What?

21 MR. STANG: Well, they're an employee of the firm.

22 THE COURT: No.

23 MR. STANG: We do --

24 THE COURT: A contractor. No, not an employee of the
25 firm, a contract lawyer.

1 MR. STANG: Well, they will certainly appear on any
2 bill that we submit. People will know that they're working on
3 the matter. But we're not --

4 THE COURT: Well, maybe at some point in the future,
5 Mr. Stang. If you -- if you today on November 9th, hire a
6 contract lawyer to work on some project but you don't have any
7 occasion to identify or disclose that until some future date
8 when you submit your fees, whether you have to identify that
9 person or not -- I'm not sure you have to, by the way. But
10 let's assume you have to at least report the time for that
11 person. That's not quite the same as the kind of thing we're
12 talking about here. And then if --

13 MR. STANG: Your Honor, I think ---

14 THE COURT: -- the Fireman's fund hires a new member
15 of its legal department who is going to work on the Archbishop
16 of San Francisco case, it doesn't have to disclose anything,
17 right?

18 MR. STANG: No, they don't.

19 But, Your Honor, your comparison to other kinds of
20 litigation, I don't have to tell anyone in that case --

21 THE COURT: Right. I agree.

22 MR. STANG: -- that I'm hiring and consulting the
23 expert. But I do in this case. If we hired -- there's a
24 company, Your Honor, called CLARO which does valuation work in
25 a lot of these cases. They've been in Camden. They've been in

1 Boy Scouts. They work on the committee's side. If I hired
2 CLARO to advise the committee on the value of claims, I have to
3 get an employment application on file and everybody knows I've
4 hired CLARO. When Mr. Frankel's client or his firm hire
5 somebody, he's saying you don't get to know that I've even
6 hired them.

7 And hiring somebody is a far stretch from invading the
8 work product privilege or attorney-client privilege.
9 Communications. We're not asking what is -- not saying give us
10 the report. But let us know that you hired KCIC which is a
11 firm that on the plaintiff's side -- I'm sorry, on the defense
12 side, does this similar kind of work.

13 I mean, really, how about a level playing field here
14 that they get to know who -- and this is about we get we get to
15 keep something from you, Mr. Stang. We get to keep something
16 from you, Mr. Katz, because by virtue of not signing the
17 confidentiality agreement, we have to --

18 THE COURT: Well, I think we're far afield from --

19 MR. STANG: We are.

20 THE COURT: -- what we're talking about. And I don't
21 know that I agree with you that that I agree and understand
22 that what your argument is.

23 But let's go back to -- Mr. Weiss, did you want to say
24 something?

25 MR. WEISS: Yeah. I have two quick points. One is I

1 guess it's really intertwined with this disclosure language.
2 And it's an instance where this is potentially problematic,
3 even if you're looking at the core claim handlers.

4 So Chicago Insurance Company and Fireman's Fund, which
5 are two of the four insurers I represent, have a third-party
6 claim hand handler called AZRA. So under the current language
7 in this order that would be a vendor, even though it's
8 basically an affiliate that does all the claims handling work.
9 And every single employee there would be required to -- at any
10 level that could potentially touch the claim be required to
11 sign a confidentiality agreement. So I think that is a
12 situation we're not talking about the sandwich guy or the
13 janitor. So I think that's something that we need to keep in
14 mind and at a minimum address that situation.

15 And that also tracks into another change that was made
16 in the revised order. On Section 17(e)(4), you'll notice in
17 the red line, it's at the top of page 29, the word
18 administrators was struck through in the list of sort of
19 insurance parties that can be permitted parties. I would
20 contend that AZRA is an administrator. The word administrator
21 included in the Oakland and Santa Rosa bar date orders.

22 So I think on two levels. 1, the word administrator
23 needs to be put back into the order. And then 2, I think that
24 the -- as Mr. Frankel said, even if we're just limiting it to
25 insurers that don't have to sign the individual -- the natural

1 person requirement, that needs to be expanded beyond that to
2 situations like to encompass AZRA.

3 So and then the other point I wanted to make quickly
4 on this issue, Mr. Stang brought up on disclosure of experts
5 and how the debtor and the committee have to do it, they
6 have -- they're getting paid out of the estate. Of course they
7 have to get permission from the Court and list who they're
8 getting paid from. That has nothing to do with the
9 confidentiality issue. And we don't -- we're not paying our
10 experts out of the estate, so we don't have to disclose that
11 with the Court. And there's no -- we shouldn't use the
12 confidentiality protocols as a way to get -- entitle the
13 committee or the debtor to something they wouldn't otherwise
14 have in under the Bankruptcy Code.

15 MR. STANG: Your Honor, I don't know if the horse is
16 quite dead. It may still be maimed. But let me just say this.
17 They want to put -- I have to be consistent, right? I pointed
18 you to Oakland. I point you to Santa Rosa. If the word
19 administrators is in their orders, put it back in ours.

20 But I find it interesting that Mr. Weiss raises AZRA,
21 because AZRA is exactly the entity that was involved in the
22 breaches in the New York cases. But if you want to put
23 administrators back in, I'm not dying on that hill because I'm
24 asking for consistency with the other two. I cited them as
25 kind of precedent.

1 But I was really surprised that AZRA came up because
2 they're the subject of the investigation that's going on in the
3 other dioceses.

4 THE COURT: Well, okay. But again, I'm not here to
5 understand enough about that. If Fireman's Fund or any of the
6 other insurance companies that are involved in this case wish
7 to hire that company, that's their business.

8 MR. STANG: Yep.

9 THE COURT: And if there are some protocols in place,
10 then that's what my responsibility is to be consistent. And if
11 any insurance company makes the mistake again of hiring a
12 vendor who causes grief and problem, then it's their problem.
13 And we have other remedies for gross abuses, but we're not
14 talking about that.

15 Look, I think there's a sense here that I want to
16 follow the Oakland and Santa Rosa procedures. That doesn't
17 mean, if I understand what we've been saying here, that every
18 employee of a third-party vendor has to sign, but rather it has
19 to be the persons that are exposed to the information and
20 likely to be within the course of their employment. I think
21 what Mr. Weiss or Mr. Frankel have said is that that's the way
22 it is. Am I right? Am I correct, Mr. Weiss, that if your
23 company has insurance claims in Oakland, then the third-party
24 vendors that are employed by your client and who are handling
25 the Oakland cases will have had to sign individual

1 nondisclosures if they are the People that are likely to have
2 access to the information, right? That's what -- that's the
3 deal. Did I get it correctly?

4 MR. WEISS: Oakland and Santa Rosa for outside
5 vendors, there's not a -- they do have a natural person
6 requirement. As I said, it wasn't an issue that was
7 contemplated as being problematic at that point when those
8 orders were --

9 THE COURT: No. But I'm sorry. I guess I'm -- now
10 I'm confused. What is the rule in Oakland?

11 MR. WEISS: Regarding natural -- whether natural --

12 THE COURT: Yes, yes.

13 MR. WEISS: In Oakland, it's -- I believe it's counsel
14 for the --

15 THE COURT: What's the rule for vendors, for vendors
16 working for the insurance company?

17 MR. WEISS: For vendors, they have to -- they have to
18 have natural persons sign.

19 THE COURT: Okay. Then that's the way I'm going to do
20 it here. But they don't have to have every person on the
21 payroll. They have to have the people who are -- as part of
22 their job have access, correct?

23 MR. WEISS: I believe it's anybody that's exposed
24 to --

25 THE COURT: Well --

1 MR. WEISS: I don't have the exact wording in front of
2 me.

3 THE COURT: But it doesn't reach the janitor or the
4 sandwich guy.

5 MR. WEISS: Well, I mean, that's how -- it's the
6 problem is how that might be interpreted. Of course, it
7 doesn't say -- it doesn't go --

8 MR. PASCUZZI: Your Honor, might I interject? Paul
9 Pascuzzi here.

10 So why don't we revise the language to be like the
11 Oakland order? The Oakland order, I think what it says is the
12 debtor, the committee, the insurer, parties, insurer authorized
13 parties, which is a group it includes administrators, can sign
14 on behalf of their counsel one form and clients one form. And
15 then anybody else has to sign an individual form. So we can
16 revise this paragraph to be consistent with that language if
17 that's where the Court is coming out.

18 THE COURT: Well, it goes back to this fundamental
19 starting point that I don't see any reason to depart. I
20 realize already in this case there may be some differences
21 between the way my two judge colleagues in Oakland are doing
22 those two cases. But I want to keep some of these things as
23 consistent as possible. So to the extent --

24 MR. FRANKEL: Your Honor --

25 THE COURT: -- that reaches certain third-party

1 individuals, so be it. I want to be consistent with that.

2 Again, I don't want a survivor who was abused in San
3 Francisco to be treated differently from a survivor who was
4 abused in Oakland by maybe the same wrongdoer. But whatever --

5 MR. FRANKEL: Your Honor --

6 THE COURT: -- the reason is, I just simply am not
7 going to tolerate some -- or at least endorse some different
8 rule all of twelve miles across the bay when I could solve this
9 problem by transferring this case to Oakland or asking the
10 Oakland judges to transfer two cases to San Francisco and solve
11 the problem and have one administration. But I'm not doing
12 that and no one's asked me to. And I don't intend to.

13 So to the extent that that imposes a bit of a burden
14 on vendors who are working for insurance companies, so be it.
15 And I think that the essence of this to me is that we're not
16 getting janitors and sandwich delivery people, but we're
17 getting responsible agents of those vendors who have or likely
18 as part of their job, to have access to the kind of information
19 that Mr. Stang wants protected.

20 Mr. Frankel?

21 MR. FRANKEL: Yes, Your Honor. I'm sorry. Not to
22 belabor the point. I'm not going to reargue any of the prior
23 issues.

24 But if I can make one request with respect to vendors
25 and consultants and the like, that we understand Your Honor's

1 ruling. But to address the confidential consulting expert type
2 situation, can we at least have a provision that counsel for
3 the insurer that uses that vendor or consultant will maintain
4 copies of the confidentiality agreements without disclosing it
5 to the world unless there is a showing of good cause? That's
6 the way it's typically done where there is a requirement if you
7 want to hire a consulting expert and there's a requirement that
8 that consulting expert has to sign on to a protective order.
9 They sign it, return it to counsel. But you don't disclose
10 that to the other parties unless there's good cause in which --
11 like if there's a the rare instance of --

12 THE COURT: Well, there's certainly going to be good
13 cause if there's a disclosure of witnesses or if there's formal
14 discovery. But Mr. Frankel, if I follow you correctly, if your
15 client hires a consultant, then that consultant has to -- you
16 have to know who it is as counsel, but you don't have to
17 disclose it to the committee or the debtor.

18 MR. FRANKEL: Right, Your Honor.

19 THE COURT: Mr. Stang, it seems to me that that seems
20 reasonable.

21 MR. STANG: Your Honor, first of all, it's not in the
22 Oakland order. Second -- so just to let you know, it's not.

23 Second, we've already heard Mr. Frankel say there's
24 attorney-client -- I thought he said attorney-client, but I'm
25 not sure. But he certainly said work product. And so I don't

1 know that there's a good cause exception to the work product
2 privilege or a good cause -- except for a case of criminal
3 conduct of course, a good cause exception for the
4 attorney-client privilege. So I don't quite know -- it seems
5 like an impenetrable curtain that's being drawn across the
6 issue of who is signing a confidentiality agreement.

7 THE COURT: But Mr. Stang, if there is a -- if there's
8 a dispute and you wish on behalf of the committee to discover
9 what Mr. Frankel has in his file, we can deal with work product
10 or crime fraud exceptions or other exceptions.

11 I believe what Mr. Frankel is worried about is just
12 the handing it over when there's nothing to disclose. And to
13 me, that seems consistent with the notion that if he and his
14 firm, his client, hire someone, that's part of work product.
15 And there's no affirmative obligation to say let's tell Mr.
16 Stang that we just hired so-and-so. And I agree with him. I
17 just don't think that we're ready to go there.

18 So what I don't know -- and again, this goes back to
19 my opening comments to Mr. Pascuzzi. I simply haven't absorbed
20 the detail, the black line of the documents that I haven't
21 studied. So I'm going to defer to Mr. Pascuzzi to make sure
22 that that what I -- what comes out of this hearing is
23 consistent with what we are now discussing. And I assume that
24 that will be that will be so.

25 Mr. Weiss, again, well, as long as you're on the

1 screen, by the way, I'm not trying -- I don't think you have to
2 put up your hand. We're having a discussion. But you put your
3 hand up. So say again what you want to say.

4 MR. WEISS: Fair enough, Your Honor. One more thing I
5 just wanted to add on the confidentiality protocols that we
6 hadn't discussed.

7 In the new 17D, which is in the middle of page 28,
8 there's a sentence or a clause that says permitted parties may
9 not use confidential information and the optional confidential
10 survivor supplement for any objections to a survivor proof of
11 claim. That is, to my knowledge, not included in the Oakland
12 or Santa Rosa orders. Our position is that's not -- the end
13 result of that is that the parties will have to take
14 substantial extra discovery to get the same information that's
15 in this supplement which will be an unnecessary use of estate
16 resources, unnecessary burden on the Court. So we would ask
17 them for that language not to be included in this.

18 THE COURT: So that's in D?

19 MR. WEISS: Yeah. It's in the -- it's kind of
20 two-thirds of the way down, new D.

21 THE COURT: Yeah.

22 MR. STANG: Your Honor --

23 THE COURT: I think I saw that in the papers leading
24 up to this hearing. And I frankly didn't quite understand it.

25 Mr. Stang, why -- if there is a proof of claim or more

1 importantly a confidential information supplement that someone
2 submits, why can the substance of that document not be the
3 subject of an objection to the claim?

4 MR. STANG: Your Honor, this is critically important
5 to us. So you know, this is not just an aside regarding this
6 bar date motion. And it comes out of the experience that we
7 had in Rockville Center where for only the second time in all
8 of the cases that have ever been filed that I'm aware of,
9 Archdiocese Milwaukee was one but Rockville Center is the most
10 current, where the debtor filed objections to survivor claims,
11 almost unheard of in these cases. And it was extremely
12 expensive. It was extremely burdensome on the survivors
13 themselves. And I can tell you caused enormous emotional
14 distress. So that's the backdrop for why this came up.

15 Because while I appreciate what you said, Judge, about
16 trying to keep things consistent with Oakland and Santa Rosa,
17 at least in my view, procedural issues, if we're going to do
18 every case the same, let's just go back to the Diocese of
19 Portland, Oregon in 2002 and just have a cookie cutter. We've
20 learned --

21 THE COURT: And what? And what?

22 MR. STANG: Just have a cookie cutter. We've learned
23 over the last twenty years how to make these cases run more
24 smoothly. And if people want a mediation process where people
25 are being open with each other, are giving information that can

1 lead to a mediated resolution, then the information that's
2 discussed should not be the subject of litigation. If people
3 want to object to claims and commence contested proceedings in
4 500-plus cases, they're certainly at liberty to do that. And
5 they'll have their formal discovery opportunities. And state
6 court counsel will have an opportunity to object to those
7 efforts and vice versa. There will be an opportunity for state
8 court counsel on behalf of their individual clients and 538
9 separate claims objections to get discovery from the Archbishop
10 and parishes and schools and anyone else who was involved in
11 their abuse.

12 So our effort was to have open communications with all
13 of the mediation parties which I hope will include the
14 insurance companies. Sometimes they have tried to on this
15 jurisdictional issue to date not become "mediation parties."
16 But our goal is to have an open communication with the parties
17 that are going to fund this case.

18 And so that's why it's in there. It was -- it
19 brought -- there are lots of reasons Rockville Center is in the
20 position it's in, which is no -- which are at an impasse as
21 described by the mediators. It didn't help that over sixteen
22 groups of claims objections were filed there. So I've learned
23 from that. I learned that that is a burden on the mediation
24 process. But nothing precludes the carriers who will have seen
25 these voluntary statements to use them, if you will, as a model

1 for their formal discovery.

2 Now, these are voluntary forms. People don't have to
3 fill them out. I read your tentative. That's what we call it
4 down here in in Los Angeles, tentative rulings. I read it.

5 THE COURT: Yeah, I know what you call it. I know
6 what we call it here too, okay?

7 MR. STANG: And knew I you knew, Judge. I knew you
8 knew. I didn't know if everyone else did.

9 And there's a warning sign in that tentative that
10 says, hey, if you all don't fill out these forms fully or you
11 don't get enough people turning into forms, this could turn
12 into claims objections. Everyone read that.

13 The state court counsel who are in this case, many of
14 them, if not all of them -- and when I say state court counsel,
15 Judge, I mean those who represent committee members, are in
16 Oakland and in Santa Rosa. And Mr. Pascuzzi will tell you that
17 north of ninety percent of the survivors in those cases have
18 submitted the voluntary statements. I'm not in those cases. I
19 don't know how robust the answers were. But he got a really
20 high turnout in terms of responses.

21 So to me, we have to make a decision at this point.
22 Are we going to have an open mediation process where
23 information is shared or is everyone pulling out their swords
24 and sabers and saying we are going to have 538 claims
25 objections because that's how we're going to get the

1 information? That's not how we want this case to go forward.
2 We want this case to reach a mediated settlement. We want it
3 to reach it quickly. The time these cases are taking is too
4 long. Years have gone by in certain cases. That's not
5 acceptable to survivors. But this issue of whether this
6 information can be used in the claims objection resets the
7 entire table and resets the entire tone of this case.

8 THE COURT: What do you suggest?

9 MR. STANG: I suggest that the voluntary
10 questionnaires be used only -- well, not be used for claims of
11 objections and be --

12 THE COURT: Wait, not used forever?

13 MR. STANG: No, forever. They can take formal
14 discovery and ask the exact same questions that are in the
15 voluntary questionnaire and more if that's the litigious route
16 they want to go. But give peace a chance here. Let's see if
17 the turnout that we saw in Santa Rosa and in Oakland can be
18 replicated here in terms of at least how many people are
19 responding.

20 But nothing in this order, not a thing of this order
21 stops Mr. Weiss or Mr. Frankel or Ms. Sugayan -- I'm just
22 pulling out the insurers, Your Honor, from filing a claim
23 objection tomorrow if that's the way they want to go. It's not
24 the way we want to go. But if they want to have the discovery,
25 let them go take it. I hope they don't.

1 THE COURT: Mr. --

2 MR. STANG: They have that right.

3 THE COURT: Mr. Stang, we have a claims bar date,
4 right?

5 MR. STANG: Yes.

6 THE COURT: So haven't proved it yet, but it looks
7 like we have one. So comes that claims bar date, it would seem
8 to me on the day after that bar date, there is a -- pretty much
9 a good fix on what the universe of claims will be. Admittedly,
10 there may be some late claims. There may be some unknown
11 claims that come in. But by and large, I suspect and my
12 personal impression is that there will probably be 500 and some
13 odd claims that the minimum and may be substantially more, but
14 they'll be there.

15 Now, are you -- you're suggesting that -- and it seems
16 to me that some of those claims, whether they're -- whether
17 they're complete on their own or they are joined by a voluntary
18 supplement, will provide sufficient information to recognize
19 that whereas one claim may be totally frivolous, another claim
20 may be totally valid. And in the former case, leaving aside
21 when it happens, the first one should be objected to, the
22 second one shouldn't be objected to. And so I don't understand
23 what you're concerned about and/or similarly what you would
24 propose if the mediation is unsuccessful. There needs to be
25 some resolution of a disputed claim. And so I guess I'm having

1 trouble understanding what your concern is. If you think that
2 some sort of blanket claims objection early would be
3 disruptive, that separate. Again, and I might very well agree
4 with you that that for a time period there should be no
5 objections to claim.

6 But it seems to me that for you to suggest that there
7 be a permanent bar on it is inconsistent with the notion that a
8 claim that's deemed allowed, if not objected to, can't be
9 objected to. And you seem --

10 MR. STANG: Well, Your Honor, I --

11 THE COURT: -- to say, well, folks, if you object to
12 claim that's nuclear war and there won't be a mediation. Then
13 you cite some other place where it didn't happen. I guess I
14 have more confidence in the process than you believe I have.

15 So what am I missing about the -- if I agree with you,
16 that at least for a short period of time, there be no objection
17 to claim?

18 MR. STANG: Your Honor, I did not say there should not
19 be -- I'm not asking for a ruling that there be no objections
20 to claims. If someone wants to file an objection to a claim
21 the day after the claim is filed, I'm not suggesting there be
22 any limitation on that.

23 Insofar as the insurers' abilities to vet these
24 claims, let's not forget that they have -- maybe not -- they
25 all should have copies of the complaints that were filed in

1 state court. Because you're right. The number of claims
2 beyond the ones that were filed in the window, I'm not sure how
3 many there will be. The bulk of them are going to be the ones
4 that were filed.

5 THE COURT: There aren't going to be. But is it it's
6 fair to say, isn't it, I'm right. There aren't going to be
7 many?

8 MR. STANG: Probably not.

9 THE COURT: Okay.

10 MR. STANG: But there is the statute of limitations
11 and ability if you are -- if you're under the age of forty-five
12 that you --

13 THE COURT: I understand that.

14 MR. STANG: -- (indiscernible) --

15 THE COURT: I understand that. Maybe there will be
16 ten. Maybe there will be twenty. There won't be 10,000. That
17 will be --

18 MR. STANG: I hope you're right.

19 THE COURT: Okay.

20 MR. STANG: We all hope you're right. But so let's
21 just deal with those. They have copies of the complaints. The
22 statute had built in protections where certificate of -- I'm
23 not sure exactly what the term is but --

24 THE COURT: It doesn't matter. I know. I know what
25 you're saying.

1 MR. STANG: That had to be done. I don't know what
2 discovery has gone on between -- not discovery -- what exchange
3 of documents there has been between the archbishop and his
4 insurers in connection with the obligation to cooperate in the
5 defense. So they're not without information. And insofar as
6 who the perpetrators might be, if it's the same perpetrators
7 that came up in the first window, well, certainly they had lots
8 of opportunities for discovery regarding those perpetrators,
9 not these claimants, of course, but those perpetrators.

10 And so I am not saying put a pause button on claims,
11 objections. What I'm saying is if you want a robust process
12 that enables the open exchange of information, do not hang the
13 threat of using these voluntary forms in litigation. Let it be
14 that they can only be used in mediation.

15 And let's assume people don't respond to the forms.
16 You signaled in your tentative that between the bar date of
17 February 20th, there would be about sixty days for everyone to
18 get the voluntary claim forms in. That's the way I read your
19 tentative.

20 THE COURT: Well, the tentative didn't -- the
21 tentative didn't say anything about objection to claim. It
22 said --

23 MR. STANG: No, it didn't.

24 THE COURT: It said the Court will likely order a
25 sixty-day period before formal discovery. I didn't think about

1 objection to claim because I wasn't even focusing on that.

2 MR. STANG: I guess I don't know how there could be
3 discovery of an individual survivor if it wasn't in the context
4 of an individual objection, but you may be right. Maybe it is
5 a process --

6 THE COURT: Well, we have a presumption. The law
7 presumes the claim is valid, right? And so you can't defeat
8 the presumption without in a formal sense objecting to the
9 claim.

10 MR. STANG: Right.

11 THE COURT: So it can't --

12 MR. STANG: So they would --

13 THE COURT: Pardon me?

14 MR. STANG: I apologize, Your Honor. It's the phone.

15 THE COURT: No. I just didn't hear what you said.

16 MR. STANG: I said They would object to the claim.
17 They would propound discovery on the survivor.

18 THE COURT: Right.

19 MR. STANG: And we'd be in a -- and people, as I said,
20 could object to the discovery protective orders, whatever it
21 might be. I'm really trying to avoid this scenario where abuse
22 survivors say, you know what, if I'm weaponizing this voluntary
23 form, you're telling me it's voluntary, right? I don't have to
24 fill it out. No, you don't have to fill it out. And I would
25 have rights and protections if this were mandatory, right, like

1 a document production request or a notice of deposition. You'd
2 be there, right, objecting to the objectionable stuff. Yeah,
3 that's right. I would be there.

4 Well, then why am I filling this out now? That's not
5 the scenario that I want. I want a scenario where people
6 because they know it's privileged and know it cannot be used in
7 in claims litigation -- again, we're talking about not using it
8 in claims litigation. I want to be clear that that's the limit
9 that we're looking for. Then I think it's going to be a much
10 more robust settlement negotiation process.

11 THE COURT: Well, I have to tell you --

12 MR. STANG: People who want to lift this restriction
13 are asking -- or not asking for -- are setting up a scenario
14 where this case is going to become very litigious. And we want
15 to avoid that.

16 THE COURT: Mr. Stang, I don't quite follow you. I
17 don't want to have it be litigious either. And what I
18 thought -- what I had in mind when I prepared my statement was
19 exactly that, that submitting the confidential information
20 would provide information to allow the insurers or the
21 dioceses, the archbishop to vet more fully if they haven't
22 already the validity of any particular proof of claim. And I
23 didn't think or say that I wouldn't permit an objection. You
24 say, well, they can just go ahead and file an objection. I
25 don't think that would be productive either.

1 But I don't understand what it means to say, please
2 submit this information, it will only be used as part of a
3 group settlement, a mediation, because I don't know what
4 happens next. If there's a mediated settlement -- let's assume
5 that the mediator brings about -- and I don't question your
6 experience and the fact that you personally and your law firm
7 have been involved in many, many, many other successfully
8 mediated abuse cases. But I don't know what happens in those
9 cases when there is a particular claim that's challengeable.

10 And so if you tell me that in dioceses -- some unknown
11 dioceses where there's a confirmed plan and a mediated
12 settlement, that there's no claims vetting process ever, and
13 every claim that got filed got allowed, I guess I would say
14 great, but how can that be because there have got to be some
15 claims in there that are suspect or that need to be vetted more
16 carefully. And I just -- and my instincts tell me you can't --
17 just because you have a global solution that says we're
18 creating a fund, whether it be a channeled trust or a fixed sum
19 of money or something, that therefore we're not going to object
20 to individual claims.

21 And what am I missing here?

22 MR. STANG: This is what happens. And I'm going to
23 use the Archbishop and us as an example. We and the Archbishop
24 reached agreement that the Archbishop and the parishes and
25 anyone else who's going to be a released party as an affiliate

1 is going to pay 100 dollars.

2 THE COURT: Okay.

3 MR. STANG: And we take that hundred dollars into the
4 settlement fund.

5 Now, in the process of them coming up -- or us coming
6 up with an agreement on the 100, Mr. Pascuzzi and Mr. Katz have
7 kicked the hell out of these claims. They've looked to see if
8 the priest was assigned to that parish or had any reason to be
9 at that parish where the abuse allegedly occurred. They
10 will -- I mean, I had one case, Your Honor, in Alaska where a
11 survivor said to me, well, that claim is false, Jim. I said
12 how do you know that? Because he says he was abused on the
13 school bus trip. We don't have any roads into our village.
14 There are no school busses.

15 So in the process of negotiating the deal with the
16 debtor, the debtor will have vetted the claims. And if there
17 is claims that the debtor says you guys want 125 dollars, but
18 we think this is only worth 100 dollars, again, total, then
19 we'll have to respond in the give-and-take of the mediation
20 about that.

21 So now we've got one hundred bucks in the settlement
22 fund. And there will -- this is how these case -- I think all
23 of them have worked out this way that have agreed -- that have
24 had plans. We now have 100 dollars in the settlement fund. We
25 have to divide that money up. There will be a claims protocol

1 that will be in the plan that will go through the elements of
2 how to allocate that 100 dollars, including a credibility
3 determination. And in Boy Scouts where there was a provision
4 for a convenience class, Judge -- I'm sorry, the court and the
5 committees, the ad hoc committee, agreed that there would be
6 what people call the fraud filter, where they'd have to be some
7 determination even for those people who got a convenience class
8 payment that they were valid claims.

9 So the way this works out is if we reach a negotiated
10 settlement, each side has vetted the credibility of their
11 claims. And when there's a division of the money, there's a
12 credibility determination because some people might get goose
13 egged, if you'll allow me to use that term, in division of the
14 money, the 100 dollars, because it's not credible. That guy
15 who said he was abused on a bus trip, he didn't get any money
16 because --

17 THE COURT: So what happened to his proof of claim?

18 MR. STANG: -- the protocol provided for that.

19 THE COURT: What happened to his proof of claim?

20 MR. STANG: Under the protocol, he was -- did not get
21 a distribution and his claim was discharged. It was not
22 formally disallowed.

23 THE COURT: But what happened to --

24 MR. STANG: It was not formally disallowed. He
25 just --

1 THE COURT: Mr. Stang.

2 MR. STANG: -- didn't get any money.

3 THE COURT: Mr. Stang, what happened to the
4 presumption of a liability of his proof of claim?

5 MR. STANG: We've got a plan that allowed for
6 creditors who did not have credible claims to receive no
7 distribution.

8 THE COURT: Wait, I don't quite -- I don't understand
9 that. In other words, it sounds to me like an informal
10 objection.

11 MR. STANG: I guess we could call it that.

12 THE COURT: It sound to me like the guy who made up
13 the claim saying he was abused on a bus when there was no bus
14 had a phony claim. Instead of objecting to the proof of claim,
15 you figured let's just not distribute to him. Well, that's
16 great, but it sounds like a de facto objection to the claim.

17 MR. STANG: Well, Your Honor, I --

18 THE COURT: So what am I missing?

19 MR. STANG: Sorry.

20 THE COURT: What?

21 MR. STANG: I'm not going to argue with you about
22 whether it was a de facto or not. But I will tell you that I
23 have objected to claims that I had concluded were false because
24 you can't be abused in the same month in three different places
25 in the country. And it was clear this guy was a fraudster.

1 By the way, we are talking about a very, very minimal
2 problem in terms of the fraud issue. But we have objected to
3 claims as a committee when in other cases. Ad whether you call
4 the claims protocol that can goose egg you a de facto objection
5 or not, the fact is that there was a process both in the
6 negotiation for the settlement amount. And by the way, this is
7 true for the insurers as well. I was just picking on Mr.
8 Pascuzzi because it was easier for me to use that as a
9 hypothetical. But everyone is vetting the claims and coming up
10 with what the reasonable settlement amount is --

11 THE COURT: All I'm -- listen --

12 MR. STANG: -- for the proof of claims.

13 THE COURT: You seem to be missing my point. I fully
14 expect vetting to take place at the insurance level, the
15 committee level, the debtor level. I start with something that
16 is black letter law that a proof of claim is deemed allowed.
17 And the way you get rid of a proof of claim that's deemed
18 allowed is you get the claimant to withdraw it or you object to
19 it.

20 You seem to be arguing to a situation that there can
21 never be an objection because objections are sensitive and it
22 forces -- if there's a potential for objection, there's a
23 deterrent for submission of the confidential information. And
24 the point I was trying to make in my preliminary thoughts was
25 if you don't -- if you don't submit the formal -- excuse me,

1 don't submit the voluntary questionnaire, you might have your
2 claim objected to, but I would consider maybe no formal
3 discovery, which might have been an error on my part not to say
4 or a claim objection and formal discovery.

5 But the fact is, you know as well as I that if there
6 is a questionable claim in any bankruptcy, whether it's an
7 abuse case or your run-in-the-mill nonabuse bankruptcy, if the
8 claimant doesn't withdraw it, you object to the claim. You
9 don't -- you don't create a class that says this -- if we
10 decide that your claim is bullshit, then we're not going to pay
11 it; therefore we're putting you in this class. So the answer
12 is you object to the claim. And it's that simple. So look,
13 I --

14 MR. STANG: Your Honor, perhaps our protocols in the
15 plan in this case will require that if we think the claim is
16 not credible, that rather than have the claims reviewer make
17 the credibility assessment, that there would actually be a
18 claim objection. But we're talking about using this voluntary
19 information in the context of the insurers or, in fact, well, I
20 guess anyone doing a claim objection, to be fair. It would be
21 anyone.

22 And if they want to file a -- if anyone wants to file
23 a claim, objection, I am not asking you to put a pause button
24 on that at any point in time. What I'm trying to convey is
25 that keeping this voluntary submissions outside of the claims

1 objection process will make -- I think significantly increase
2 the likelihood of a negotiated settlement because people are
3 going to be more open with one another. But if it turns out
4 that we are hitting a roadblock because not enough people have
5 submitted the claim form -- I mean, the voluntary information,
6 or those that have have not filled it out completely, then at
7 any point in time -- but hopefully they would wait until we see
8 what kind of responses we get. But at any point in time,
9 people can file a claim objection on the basis that there is
10 insufficient information. I mean, whatever 502 says about the
11 right to object to a claim. If there's insufficient
12 information, then they can proceed the way they want.

13 I'm not asking the Court to impose any pause on the
14 right to object to a claim or any of the discovery rights that
15 go along with that. I'm simply asking that if someone submits
16 a voluntary form, that that form -- their answers -- that form
17 and the answers on that form not be used as Exhibit A to a
18 claim objection. And people can go through that form in a
19 discovery request via document production, request for
20 admissions, interrogatories, deposition, and ask every question
21 on that form and the other 200 questions they may have and
22 submit it as a form of discovery. But then at least the
23 survivor is in a position where they understand that the nature
24 of the case, at least for them individually, has changed.

25 Right now, we're trying to keep peace so that we can

1 have fulsome, complete, and open discussions about the claims
2 in general and individual claims, if that's how granular we
3 get.

4 THE COURT: Okay. I've got several --

5 MR. PASCUZZI: Your Honor --

6 THE COURT: I want to ask Mr. Pascuzzi first.

7 MR. PASCUZZI: Okay.

8 THE COURT: What's your take on this? What do you
9 want me to do about it?

10 MR. PASCUZZI: Thank you, Your Honor. I did want
11 to -- I don't mean to step in front of the insurers, but I do
12 think you should hear from the debtor first.

13 THE COURT: No, I called on you. I called on you.

14 MR. PASCUZZI: Okay. Thank you. Well, Your Honor,
15 this was a compromised position. As Mr. Stang notes and as the
16 Court notes, we cannot get -- we cannot force the survivors to
17 submit the voluntary supplement. That is an evolution in these
18 kinds of cases, starting with Buffalo, then Oakland, and then
19 Santa Rosa. But we all acknowledge and agree that we need this
20 information. And the Court recognized that in its preliminary
21 comments, tentative ruling. We need the information to move
22 the case forward.

23 My goal is to get this case to mediation as soon as
24 possible. And so if you were to order that some -- that these
25 supplements, and it's just the supplements, not the 410 form,

1 just the supplements can be used for claim objections, then I
2 think Mr. Stang is going to tell you that we're not going to
3 get any supplements filled out. So we're going to have the
4 official 410 form. And then for us to go to mediation, for us
5 to negotiate with the carriers, negotiate with the committee,
6 we're going to have to do discovery before we even do that. So
7 we look at that as an enormously expensive, enormously
8 time-consuming, and enormously wasteful time.

9 So we negotiated a small carveout for the use of the
10 supplemental -- the supplemental forms, the confidential
11 information in the supplemental forms, so that they can't be
12 used for claim objections. And the reason that was acceptable
13 to us is because we want to go to mediation. And if mediation
14 fails and we have to do something else, we'll figure that out
15 if and when that happens.

16 But in the meantime, we don't want to be doing
17 discovery on 500-plus claims just to be able to go to
18 mediation. So that's why we agreed to the compromise here.
19 And yes, it is not in Oakland. It is not in Santa Rosa. The
20 Oakland and Santa Rosa committees both agreed to submit support
21 letters for -- urging the survivors to complete the supplement
22 because it is so useful and so necessary to the mediation
23 process.

24 So this committee is taking a little bit of a
25 different position. But the alternative is we don't get the

1 information. We get the official form 10 which isn't going to
2 have enough information. And then we have to spend six to nine
3 months trying to get more information through discovery and
4 litigation which we just don't see that as productive.

5 THE COURT: Do you want me to go further and say there
6 can be no claim objection until later date?

7 MR. PASCUZZI: No, no. I don't think Mr. Stang is
8 asking you for that. The only thing --

9 THE COURT: No, no, no. He's not

10 MR. PASCUZZI: The only thing --

11 THE COURT: He's not.

12 MR. PASCUZZI: Yeah.

13 THE COURT: I'm asking you.

14 MR. PASCUZZI: No, I don't want you to do that. I
15 don't want to tie anybody's hands. I would like it the way
16 it's been negotiated. The supplemental form only cannot be
17 used for claim objections. But as Mr. Stang said, discovery
18 can happen. Claim objections can happen. I hope that isn't
19 necessary, but hopefully we'll have a robust response with the
20 voluntary supplements, I can report in Santa Rosa about ninety
21 percent of the claims included supplements. I can't say that
22 each one was fully and completely filled out, but it was a good
23 response. I think that's a similar response rate in Oakland.

24 THE COURT: But you said there's no prohibition on use
25 of the supplement in Santa Rosa.

1 MR. PASCUZZI: There is not. But they are voluntary.
2 And the committee encouraged the survivors and their lawyers to
3 complete them.

4 THE COURT: Okay. Okay. So --

5 MR. PASCUZZI: If we end up in a situation here where
6 the committee and the survivor lawyers are saying don't fill
7 out the supplements, then we will be left in a position where
8 we'll have the official 410 form. And we will then have to do
9 costly and time-consuming discovery to get to mediation.

10 THE COURT: Okay. Okay. I got it. So this is
11 another way of saying you accept Mr. Stang's language and you
12 want me to adopt that.

13 MR. PASCUZZI: I want you to adopt it the way it is,
14 yes.

15 THE COURT: Okay. All three counsel for the
16 committee -- sorry, for the insurers have raised their hand.
17 I'll just go left to right, starting with you, Mr. Frankel, and
18 then Ms. Sugayan and then Mr. Weiss.

19 MR. FRANKEL: Yeah. Thank you, Your Honor. I'll
20 start.

21 I think what they're asking for is -- first of all, it
22 might have the opposite effect. They're basically asking to
23 cloak the supplements in mediation confidentiality protection,
24 because if you can't use it for any purpose, if you can't use
25 the claim supplement for any purpose, it's going to, as a

1 practical matter, be like mediation confidentiality.

2 MR. PASCUZZI: I don't mean to interrupt, but that's
3 not what it says.

4 MR. FRANKEL: Well --

5 MR. PASCUZZI: It's not You can't use it for any
6 purpose.

7 MR. FRANKEL: You can't --

8 MR. PASCUZZI: It says you can use it for any purpose
9 except claim objections. I'm sorry. We just -- let's be
10 accurate, please.

11 MR. FRANKEL: No, I'm -- you're right, Mr. --

12 THE COURT: Gentlemen, slow down. I'm trying to read
13 it too, so hold on. Let me just read it.

14 May not use confidential information in the
15 confidential settlement for any objections to a surviving proof
16 of claim.

17 Okay. Go ahead, Mr. Frankel.

18 MR. FRANKEL: So Mr. Pascuzzi is correct. I misspoke.
19 You can't use it for purposes of a claim objection.

20 So this caught my eye. And I attempted to meet and
21 confer with Mr. Stang's partner to try to understand the scope
22 of this. And I said, let me take -- let's take an example.
23 You have a claim supplement. And based on the information in
24 the supplement, it shows that it's really not a valid claim.
25 But can you object to that claim without using the supplement

1 if you now the information -- you know the claim is invalid.
2 The answer is no, because if you're using the supplement at
3 all, unless you have some independent basis to object to that
4 claim, you can't object. And so what that means is that you're
5 going to -- you're going to force parties -- unless there's a
6 global successful resolution, you're going to force discovery
7 on these claims to get information underlying the claim that
8 you wouldn't get from the proof of claim form.

9 And I think the fact that in Oakland and in Santa Rosa
10 where you didn't have this cloak of mediation prohibited use,
11 yet you still had ninety percent -- over ninety percent of the
12 claimants agree to submit the form -- and in other cases, it's
13 subject to a disclosure that the supplement -- if you don't
14 fill it out, it could provide a basis for a disallowance of the
15 claim.

16 I think that actually motivates claimants to complete
17 the information. It doesn't motivate them to just kind of
18 stand back because they know that if they don't provide this
19 information, not only might they not get paid, not only might
20 not there be a successful confirmed plan, but their claim might
21 be objected to. And so it avoids the need for discovery. It
22 facilitates a potential resolution. And by cloaking it in this
23 confidentiality where you can't use it to object to a claim, I
24 just think it's counterproductive.

25 No other case that I'm aware of, no other archbishop

1 case -- some of them require the proofs of -- the supplements
2 as part of the -- as a mandatory process.

3 THE COURT: No, I know that. And I don't like that
4 idea.

5 MR. FRANKEL: This would go the opposite extreme. It
6 would basically say you could have this information for
7 mediation purposes only and that's it. And so we just think
8 it's counterproductive., And it could have the opposite
9 effect.

10 THE COURT: Okay. Ms. Sugayan, you wish to be heard?
11 Thank you for your patience.

12 MS. SUGAYAN: Thank you, Your Honor. Kathy Sugayan on
13 behalf of certain underwriters at Lloyd's.

14 Your Honor, I've been doing this a long time. In
15 fact, I was involved with the first diocese bankruptcy just
16 like you, Portland and Oregon. And typically when we've been
17 involved in these cases, the requests for information is to get
18 information so we can understand the claims, hopefully get
19 involved in a global mediation in settlement, have the
20 opportunity to vet claims. That's the reason why early on in
21 these cases, my client is always asking us to request as much
22 information as we need to determine the legitimacy of the
23 claims, whether or not other defendants should be paying them,
24 issues like that. But Your Honor, already covered that, so
25 I'll just move on.

1 I agree with Mr. Frankel that the process of allowing
2 claim objections based on the POC forms or the supplements is
3 going to be much less disruptive and less costly than having to
4 do the discovery that Mr. Stang is talking about.

5 I was involved in in Milwaukee. I was also involved
6 in Rockville Center, and we were involved in watching all the
7 claim objections. My clients had a number of the claims that
8 were being objected to. I was involved at a number -- or at
9 least monitored a number of the hearings. The type of
10 objections there were sort of omnibus objections that affected
11 groups of claims, things like were there double claims so you
12 could get rid of duplicates. Issues, were they filed after the
13 bar date or after the CVA window closed, things like did the
14 abuse happen at a school or some entity and was the abuse by a
15 person who had no affiliation with the diocese? That was the
16 purpose of that first group of claims.

17 My understanding of the claimants' objections from
18 that claims process is that some felt that they didn't have the
19 opportunity on the objections that went to propensity, whether
20 or not the diocese had sufficient knowledge in order to have a
21 viable cause of action for negligence, felt like they didn't
22 have the chance to do sufficient discovery. And the judge
23 there, Judge Glenn, they're allowed to appeal that issue. Some
24 of them were allowed the opportunity to supplement their claim
25 forms. I can understand in that situation, we don't want to

1 weaponize anybody, defendants or insurers. If someone needs an
2 opportunity to replead or amend, then tat process should
3 happen.

4 But again, the whole issue here is I think that using
5 the claim -- using the PLCs is a basis for any claim objections
6 when you have reasons such as duplication or that perp was not
7 an employee of the diocese, issues like that. We should be
8 able to, I guess, flesh out the claims that aren't legitimate.

9 THE COURT: What do you think -- well, what do you
10 what do you think about my musing about maybe a timeout before
11 there can be a claim objection? Do you think that's helpful or
12 just or not?

13 MS. SUGAYAN: If we could agree on -- if everyone
14 could agree on a mediation process and then try it that way,
15 and if there was a sufficient exchange of information, we would
16 be agreeable. Again, the devil is --

17 THE COURT: No, no. No, let me rephrase that. If the
18 principal players here -- and without trying to pick who they
19 are -- if there was a consensus that we've picked a mediator
20 and we're going to go to mediation on whatever date and I said
21 fine, and you said and therefore we're going to put a time out
22 on claims objection, it would seem to me that would be helpful.
23 But at the moment, we don't have that. And no one's reporting
24 that.

25 So you're making an argument which is consistent with

1 my sense that you can get rid of a lot of specific claims that
2 are questionable without forcing the hand of the claimant or
3 the victim who has a viable claim and yet may have been
4 deterred from filing that supplemental information because he
5 or she would have been frightened off at the risk of having to
6 defend it in court. So it's kind of a dilemma that I wonder if
7 we can avoid. And I don't know what the easy answer is.

8 Well, go ahead. I stopped you. Finish your point.
9 And then allow Mr. Weiss to add his thoughts.

10 MS. SUGAYAN: Well, I guess just one kind of final
11 point on that are two final points.

12 We are willing to respect confidentiality concerns in
13 connection with anything throughout this entire process. So
14 that shouldn't be an issue here.

15 And I think lastly, by objecting to claims and being
16 able to, I guess, eliminate the illegitimate claims, then the
17 legitimate claimants actually have a larger pot of money in
18 which they can share. And you're not having people who don't
19 have legitimate claims voting for the plan at the end of the
20 day, which is why I understand Mr. Stang to be saying.

21 THE COURT: Depends on what the plan is. If the plan
22 pays everybody in full, the votes aren't very difficult. If
23 the plan is a pot plan, that obviously we got a different
24 situation.

25 SO Ms. Sugayan, what do you think would happen if a

1 person filled out a confidential supplement and you couldn't --
2 you couldn't use it for objecting to the claim and you filed an
3 objection to the claim that said give me all the facts that
4 support your proof of claim? Wouldn't that -- wouldn't that
5 force the very exchange of information that has just kept
6 confidential? I mean, and it doesn't -- it seems to me --
7 well, what would happen in that case?

8 MS. SUGAYAN: Well, I guess that that just goes to the
9 reason why we should be able to use a proof of claim and we
10 should be able to file objections under various confidentiality
11 protocols. I guess we'd have to --

12 THE COURT: No, no. But the proposed order says that
13 the supplement can't be used to support a proof of claim
14 objection. But what I'm saying is, suppose you have a proof of
15 claim that's blank, I was abused and I want a million dollars,
16 period, but the supplement gives a lot of detail. But you
17 can't use the supplement, so you file an objection to the proof
18 of claim and say give me all the facts just like -- just like
19 you would happen outside of bankruptcy. Give me all the facts
20 that supports your assertion of your claim. Wouldn't that
21 force the claimant to provide the information, the very same
22 information that's in the confidential settlement?

23 MS. SUGAYAN: Well, I agree. You're still saying that
24 we're going to be given the opportunity to file objections.
25 We're just saying here that using the supplement, like you

1 said, it would be much less disruptive and less costly because
2 you wouldn't be filing discovery and seeking answers which
3 takes a lot of time.

4 THE COURT: Okay.

5 MS. SUGAYAN: I understand we're getting to the same
6 place at the end of the day.

7 THE COURT: Mr. Weiss?

8 MR. WEISS: Thank you, Your Honor. Just a couple of
9 additional points.

10 I think really the end of the conversation, my opinion
11 is that we should all follow what the same thing that was done
12 in Oakland and Santa Rosa. Mr. Stang or the first part of this
13 hearing said that was very important. And then suddenly when
14 the issue doesn't favor him, we need to try something new.

15 And looking at those two cases, Mr. Pascuzzi said that
16 ninety percent of the claimants provided supplements, and there
17 was no bar on using them for claim objections. So it clearly
18 didn't dissuade him there.

19 I can't speak to what the committee may or may not do
20 here. I haven't had any conversations with them. But it seems
21 like -- that doesn't seem like it would be a major bar to
22 getting the information.

23 And we are involved in those two cases. And the
24 discussion there was -- there was a debate about whether or not
25 the supplements should be mandatory. And the argument was

1 that, well, if it's mandatory, that's going to dissuade people
2 from providing supplements, so we should make it optional.
3 That's what both those courts ruled.

4 So now the argument the committee is making here is
5 well, it's optional, so people are going to not just not do it
6 if you can use it as a -- if it can be applied to a claim
7 objection. So I think it's -- there's just a lot of
8 inconsistent positions between these cases. And I know it's
9 not the same committee counsel, but it just seems like if we're
10 going to make this optional, which is what the consensus
11 appears to be, then they should get the benefit and the burden
12 of submitting it. They're submitting these supplements and
13 they're going to get the benefit of it being deemed allowed
14 subject to objection. But there should be an objection.
15 Right? This is part of the bankruptcy rules and the bankruptcy
16 process.

17 THE COURT: But there doesn't have to be an objection
18 early. Sometimes it's a waste of time and money to object to
19 early. If you don't have any money to pay creditors, you don't
20 like to waste time objecting. And if you have -- I'm not
21 suggesting that's the case here, but I'm saying sometimes
22 timing on a claim objection is constructive and a good thing to
23 do. Which gets back to my suggestion before thinking out loud,
24 why don't I just have a moratorium on claims objection?

25 But I want to come back to Pascuzzi -- well, Mr.

1 Weiss, have you finished that your point?

2 MR. WEISS: Well, the one other thing I'll just say is
3 Mr. Stang talked a lot about how in some of these other cases
4 there weren't objections up front or according to the rules,
5 but then there was a procedure within a plan to address it.
6 And that's not a good substitute for the established process
7 for objecting to claims. I think that we've talked about the
8 need -- it's all part of the process of negotiating a deal
9 between the committee and the debtor and then that -- then the
10 claims get sorted out in the plan process.

11 But what could happen, what's happened in some cases
12 we've been in is once the debtor gets a deal -- and I'm not
13 saying that's going to happen here, but it happens in cases
14 where it caps their liability, they don't have an incentive to
15 object to claims anymore. It's on the other parties. So if
16 we're not part -- if the insurers aren't part of that
17 discussion, then it becomes -- it falls to them. And if they
18 don't have the access to these supplements, then it's --
19 they're certainly at square 1 as far as discovery.

20 THE COURT: So what happened -- what's happened in
21 other cases where there's been a fixed sum of money set aside
22 and what you say that there's no motive for the church or the
23 diocese to object to claims? So who objects to the claims that
24 are phony?

25 MR. WEISS: So in the -- I mean, I think Camden is one

1 case where I think that's -- we've seen that. And some of the
2 insurance companies had to file their own objections.

3 THE COURT: So they've done it. So the insurance
4 companies have stepped up and object to the claims. The
5 committee has not in those cases?

6 MR. WEISS: The committee -- I'm not aware of any
7 objections being filed by the committee in those cases.

8 And the last thing I'll add is just even if you were
9 to say let's do it through a plan process, there's -- not
10 knowing what the plan would be, you can't really speculate.
11 But there's all kinds of foreseeable problems in a plan that
12 would not give the same vigorous vetting of claims that you
13 would get under a normal bankruptcy rules procedure.

14 And the last thing I'll say is the key here is to
15 allow the payment of valid claims, not every claim that's
16 filed. And I think to --

17 THE COURT: Well, right. I mean, isn't that the point
18 I was trying to make? Whether you do it early in the case or
19 late in the case, unless this is a one hundred percent payment
20 in full case, you have to get rid of the bad claims because the
21 bad claims dilute the good claims. And let's face it, from
22 life experiences, we know there are likely to be some bad
23 claims.

24 And so to me, it's a question of when and whether to
25 permit the objection process to go forward. Mr. Stang seems

1 to -- and I do find Mr. Sagan's comments to be a bit
2 inconsistent. He says don't let them used the confidential
3 information, but they can object any time they want to, which
4 is an invitation perhaps to either blow up the mediation
5 process or to create a complete contradiction to say I can't
6 use the very thing that I want to use to base my objection,
7 which I don't -- don't make any make any sense to me.

8 But I want to come back to Mr. Pascuzzi. But for both
9 you and Mr. Weiss and Mr. Sugayan -- well, Mr. Weiss, you did
10 it. But Ms. Sugayan, I need you either to take down your hand
11 or finish your point. It's not that I want to be rude. I
12 just -- I want to not be rude.

13 Okay. Mr. Stang has his hand up. Mr. Stang, I'll
14 come back to you.

15 Mr. Pascuzzi, I kind of go back to you. I'm
16 struggling to figure out the right thing to do. My instincts
17 still tell me that I should not make claim objection
18 prohibitive and impossible. But I do think maybe a timeout on
19 it would be constructive. But you don't seem to be supportive
20 of that.

21 So tell me again, given the fact that this committee
22 is the committee you're stuck with or dealing with, stuck with
23 is a term of endearment, this is your committee in this case,
24 and unlike the Santa Rosa case where you are also principal
25 counsel, what do you want me to do given these concerns?

1 Again, repeat it or refine it.

2 MR. PASCUZZI: Your Honor, our goal is to get to
3 mediation as soon as possible. To get to mediation, we need
4 the information in the supplement because we can't make the
5 supplement mandatory. It's optional. So in order to get that
6 information, if we need to say we won't use the confidential
7 information in the supplement as a basis to object to claims,
8 I'm willing to do that. That doesn't mean we can't object to
9 claims or anybody can't object to claims. Mr. Stang said that
10 we're not planning on objecting to claims; we want to go to
11 mediation.

12 I think the whole objection to claim issue right now
13 is not focusing on what's important right now, getting to
14 mediation and getting the information. The result of not
15 putting that in the order now, it very likely could be,
16 according to our conversations with committee counsel, is we're
17 not going to get the information. So we will have to do
18 discovery in order to get to mediation.

19 And doesn't mean that fraudulent claims or bad claims
20 or claims that deserve to be objected to won't be objected to
21 later in the case, they'll get paid anything. That will all
22 get handled. It gets handled in every one of these cases by
23 competent professional people that the claims review process is
24 an important element of every Chapter 11 plan in these cases.

25 So my goal again, is to get to mediation as soon as

1 possible. I don't want to have to do discovery to get the
2 information that is put forth in these voluntary supplements.
3 And in my communications and conversations with Mr. Stang, if
4 we agree to this limitation, we will have a good turnout of the
5 optional supplement. And that's what's most important right
6 now for the progress of the case.

7 THE COURT: Okay. So the person who listens to this
8 discussion and believes you, and I adopt your recommendation,
9 the person fills out the confidential information. And the
10 mediation occurs. And whether it's successful or not, what do
11 you do when it's time to object to that person's claim when
12 that person says you committed not to use the information I
13 gave you? What do you -- what do you tell -- what do you do to
14 deal with them to get that claim clarified?

15 MR. PASCUZZI: You said it and Mr. Stang said it. You
16 could object to the claim not based on the supplement but based
17 on the proof of claim. And you could send them
18 interrogatories, take their depositions, send them document
19 requests for all the information that supports their claim.
20 And that information will be produced in part of the normal
21 claim objection process. And the claim -- everyone will have
22 their fair hearing to prove up the claim or object to the
23 claim. And so I don't understand why that is an issue.

24 THE COURT: All right. So the claimant provides a
25 response to the discovery. Are you allowed to compare that

1 response to whatever that same claimant submitted on his
2 supplement? Or stated differently, what if the objection is --
3 when the discovery is one objection, tell me anything -- tell
4 me everything you said in your supplement

5 MR. PASCUZZI: Well, I'll let Mr. Stang answer that.

6 THE COURT: No, I want you --

7 MR. PASCUZZI: Okay.

8 THE COURT: Because you're the lawyer for two
9 dioceses, one of which has the procedure one way and one of
10 which has the procedure another way. And I want to know how
11 you can handle it. Well, I'll ask Mr. Stang the same question.
12 And I'm not trying to put you on the spot, but to some extent I
13 am asking you to put yourself on the spot.

14 MR. PASCUZZI: Yeah. I don't think you can use the --
15 under the order, you can't use what's in the optional
16 supplement for claim objections.

17 THE COURT: But can you ask what facts you have to
18 support your proof of -- your assertion?

19 MR. PASCUZZI: Yes, yes.

20 THE COURT: And what would you do if there was an
21 inconsistency between what that claimant submitted now with
22 what he -- that he or she submitted previously?

23 MR. PASCUZZI: I don't think you could use the
24 optional supplement confidential information to deal with that
25 issue.

1 THE COURT: Mr. Stang, what does Mr. Pascuzzi do in
2 that situation? Is it fair game to object to the claim and
3 include a request for admission? Is everything you said in
4 your supplement true or something like that? Can he do that?

5 MR. STANG: Your Honor, I don't think so.

6 THE COURT: Okay.

7 MR. STANG: But if you wanted to include in your
8 interrogatories or in your deposition questions the exact same
9 questions that were posed in the voluntary submission, then you
10 could do that. You're certainly free to do it.

11 THE COURT: Can he then compare the two answers?

12 MR. STANG: Well, I guess he could -- I don't think he
13 could use it in a claim objection, saying -- well, I'll take
14 that back. He cannot use it in a claim objection that says
15 under the voluntary statement you said it was Father Smith, and
16 now in our formal discovery, you said it was Father Jones.
17 That that would not be permissible. But --

18 THE COURT: He couldn't even mention the one who's
19 named in the first --

20 MR. STANG: Well, he could ask him, did Father Smith
21 abuse you? He could ask if Father Jacoby abused you or Father
22 Suarez or --

23 THE COURT: We don't -- I guess what I'm getting at is
24 what -- not as the presiding judge here, but as if I were in
25 practice and I had to advise my client whether or not to submit

1 this voluntary supplemental form, what would I tell that person
2 about what might happen with that information? If you're
3 telling me it's somehow sacred and can never be reexamined,
4 that's one thing. If you tell me that, oh, they can get it
5 some other way in the future, the same information, it seems to
6 me we're dealing with facts, not fantasies. And facts are
7 facts and facts need to be -- can be discovered in discovery.

8 So tell me again, under your scheme, whether there's a
9 mediated result or not, what happens to that information that
10 the person has admitted voluntarily?

11 MR. STANG: That information can be used in the
12 mediation context of the negotiations with the parties who are
13 going to fund the plan. And they can counteroffer or offer
14 based on their assessment of the credibility. So that is how
15 it can be used in the context of trying to reach a deal.

16 Your Honor, there are -- you've been gracious in
17 acknowledging my experience. I have handled enough cases. I
18 probably have handled cases with over 40,000 survivors. I have
19 objected to claims as committee counsel. It is rare because I
20 think the quote, phony claims are extremely rare. And
21 California, by virtue of how -- of its statute of limitations,
22 amendment and the creation of the window, put an extra layer of
23 protection against what you call the phony claims.

24 I don't think people here need the motivation that Mr.
25 Frankel talked about, because for these people, nearly most of

1 their lives, because most of them were abused when they were
2 young, has been trying to find a remedy for what happened to
3 them. And I can assure everyone on this call that if there is
4 any group that wants a speedy resolution of this case, it is
5 the survivors, maybe even more so than the archbishop himself.

6 As you know, Judge, this is an aging population.
7 People who were sexually abused as children, generally
8 speaking, are not in the best of health because -- for a lot of
9 reasons related to their abuse. So this is not something that
10 we want to drag out. So we don't need the motivation that Mr.
11 Frankel suggested.

12 And as far as Ms. Sugayan's comments are concerned, if
13 there are duplicate claims, you don't need the voluntary
14 supplement to identify those. If there is no affiliation with
15 the Archbishop, there are complaints on file that will be
16 attached to the 410 form. There are files that the Archbishop
17 has regarding abuse claims that can identify whether a
18 religious order was involved. Now, not every -- I'm not saying
19 there's a form, there's a file on every claim form, on every
20 proof of claim that has been filed. But if the complaint says
21 I was abused at a Franciscan parish or a Franciscan high
22 school, well, you don't need the supplement to go to the
23 archdiocese and say what is the relationship between the
24 Franciscans and the archbishop as to this school. And the
25 person is not -- that's the what I call the not us. It wasn't

1 us; it was the Franciscans. It would it wasn't even Catholics.
2 I've had those. I had to prove a claim once that said -- well,
3 I'll leave that alone.

4 THE COURT: That doesn't matter. Mr. Stang, in my in
5 my brief experience in the Portland case, there were -- there
6 was at least one claim asserted by someone who claims to have
7 been abused. But unfortunately, he was in prison at the time
8 he claimed that he'd been abused. So I understand the fact
9 there can be a problem.

10 But your situation, I assume in your hypothetical, an
11 objection to claim could say I object to this claim because the
12 Franciscan priests are not part of this diocese. And if that
13 objection-- that would be the end of that claim. Right?

14 MR. STANG: Right. And by the way, Your Honor, that
15 prisoner, I think it's the guy who was talking about when I
16 said I objected to the claim because I had a guy who was doing
17 this serially and he was in prison the whole time.

18 THE COURT: Okay. But Mr. Stang --

19 MR. FRANKEL: So --

20 THE COURT: Mr. Stang, if we had the dude from Alaska
21 who claims to have been abused on the bus and if he filed a
22 claim in the San Francisco case, presumably an objection could
23 say we don't -- we didn't run any busses in Alaska and that
24 would be the end of that claim. But then your point is that --
25 I think if I'm following you, there is a way to get rid of

1 duplicates or claims that are simply asserted against someone
2 other than anyone who's affiliated with the Archbishop of San
3 Francisco and so on. And that's what you want to do. And I
4 gather -- and I'm not going to ask you what you would do if you
5 were counsel for the Santa Rosa Committee, because you're not.
6 But Mr. Pascuzzi believes that the better thing here is to
7 adhere to your suggestion and not to take a position one way or
8 the other on claims objection, therefore not for me to put any
9 kind of a time out on client objection but to take the language
10 that we've been talking about for the last two hours and stick
11 with it. And okay, I got the message. I don't need to have
12 any further discussion.

13 Mr. Pascuzzi, I will defer to your judgment on this
14 and I won't -- I'll accept that language. I'm still having
15 trouble -- and we maybe haven't even gotten near being
16 finished -- going through the black line. And I for one, am
17 getting a little -- want to take a break and maybe everybody
18 else does.

19 But I'm not going to worry about whether you have to
20 deal with a slightly different situation in Santa Rosa. You
21 have urged and committee counsel has made an impressive
22 argument about why to do what we're doing here. I still have
23 some concerns, and I'd be interested in whether you have a
24 solution for me at this point, whether we should put in the
25 language something about something in the future. In other

1 words, I want to avoid being inconsistent if there is a
2 mediated result on whether there is an absolute bar on ever
3 using the supplement to support an objection or not. And I
4 gather Mr. Stang would say never, just have to have some other
5 basis for objection. And that's what you want to live with
6 also, right?

7 MR. PASCUZZI: Yes, Your Honor.

8 THE COURT: Okay. Well, I'm going to defer to the
9 committee and to the debtor's wishes on this.

10 And for the three counsel who made the argument for
11 the for the insurers, I'm not going to tell you. You may or
12 may not object your claims. I'm going to stick with the let
13 the parties figure out a way. And if the debtor believes or
14 the committee believes that somehow the insurers shouldn't be
15 permitted to object to claims at some earlier date, they can --
16 first of all, that hasn't happened. And second of all, if
17 there is a basis to consider staying any claims objection, I'll
18 deal with it when there's something to deal with.

19 So Mr. Pascuzzi, unless you think we're going to wrap
20 up quickly, I'm going to suggest we take a personal convenience
21 break. What do you anticipate for the balance of what we need
22 to cover? And we certainly haven't covered much of the markup,
23 but we certainly covered a critical component of it.

24 MR. PASCUZZI: Yeah, I think we hit some -- most of
25 the major issues. There's probably one other issue that I

1 believe may revolve around the insurers' request for that
2 additional question. And your preliminary comments said put it
3 in there. I did put it in there. I believe the committee has
4 some comments about that.

5 There's a footnote in paragraph 17C regarding the U.S.
6 Trustee access to the survivor proofs of claim. I'm not really
7 sure if -- the committee wants that out. I think the U.S.
8 Trustee was not taking a position, so I don't know.

9 THE COURT: Slow down. Give me the footnote or what
10 page it's on.

11 MR. PASCUZZI: It's on page 27 of the red line. And
12 it's the footnote -- I think it's 4 about The U.S. Trustee
13 shall have full access to the survivor proofs of claim.

14 THE COURT: Hold on, please. Slow down. I can't find
15 it. Oh, okay. Notwithstanding -- and the committee wants that
16 out?

17 MR. STANG: No. Your Honor, the footnote is fine.

18 THE COURT: Oh. Mr. Blumberg? Oh, footnote is fine?
19 SO that's what you want, Mr. Blumberg?

20 MR. BLUMBERG: Your Honor, Jason Blumberg.

21 The additional language was at the United States
22 trustee's request. I believe it was at the committee's
23 request. As I conveyed to counsel yesterday, we have no
24 position on the additional language. So --

25 THE COURT: Okay. Mr. Pascuzzi, you want to come back

1 in a moment or now or after a break about --

2 MR. PASCUZZI: We can take a break, Your Honor,
3 because I'm not sure how quickly the other discussion will be,
4 but I don't think we're going to be another hour hopefully.
5 Hopefully we'll be within thirty to forty-five minutes at the
6 most. But I'm happy to take a break.

7 THE COURT: Well, one second.

8 Mr. Stang, You apparently do not agree with the one
9 provision that I said could go in. So can you explain that?

10 MR. STANG: Yes, Your Honor.

11 THE COURT: You're on a roll here with getting me to
12 back off.

13 MR. STANG: Well --

14 THE COURT: Tell me what the problem is.

15 MR. STANG: I'll tell you, Your Honor. So I am
16 looking at the language. And we are -- we have met and
17 conferred with -- and I apologize, counsel, I don't know which
18 of you, but someone who was speaking on behalf of several of
19 the insurers. And this is our difficulty with the language.

20 THE COURT: Slow down for a minute. Can you point me
21 to the language in the order? I mean, I've got my preliminary
22 comments, but I want to see it in the order.

23 MR. PASCUZZI: Your Honor, if I --

24 MR. STANG: I may have to --

25 MR. PASCUZZI: -- can interject.

1 MR. STANG: -- ask Mr. Pascuzzi for help on that.

2 MR. PASCUZZI: Yeah. It's actually in the Survivor
3 claim supplement. So it's on page 71 of the docket 297.

4 THE COURT: Okay. I'm there.

5 MR. PASCUZZI: And it's the item J that was added. Do
6 you have personal knowledge or a reason to believe?

7 MR. STANG: Yes.

8 THE COURT: Okay. Got it. Okay.

9 MR. STANG: That's the question, Your Honor.

10 THE COURT: Got it. Mr. Stang, yes. That's right.

11 That is the language that I believe I picked from the
12 insurers and said seemed to be okay. And so you don't
13 like that language, right?

14 MR. STANG: Well, I don't like the language, but we're
15 not adverse to something that we think is actually more
16 relevant.

17 And, Your Honor, I just -- as a very quick backdrop,
18 the archbishop's liability can be based on a number of
19 theories. Was there a fiduciary relationship between the
20 archbishop and the survivor? Was there a -- that does not
21 require, in our belief, notice of the particular priest's
22 abusive proclivities -- proclivity, I guess is --

23 THE COURT: Okay.

24 MR. STANG: Proclivity. Second, if not a fiduciary
25 duty, was there a special relationship that existed?

1 California recognizes that the existence of a special
2 relationship can be the basis for liability regardless of
3 notice. That's our belief of one of the theories. And then,
4 of course, there's the theory of, hey, you knew or should have
5 known that the priest had this proclivity, different than
6 fiduciary duty, different than special relationship. That
7 theory may require some form of notice.

8 So I want you to -- I would like you to appreciate
9 that notice is not the be-all and end-all of these cases and
10 the basis for the archbishop's liability.

11 With that being said, Question J is way too broad. We
12 think it should say did you tell any -- I mean, do you know if
13 anyone told the Archbishop? So question J because that's the
14 red line -- I'm sorry, I, is did you tell anyone. We think the
15 appropriate question is do you know if anyone else told the
16 archbishop? And if the answer is yes, who do you think that
17 person was? Let's call it the reporter. Who did the reporter
18 tell and when?

19 But this is the problem with the question is posed by
20 the carriers and that you tentatively adopted. I may think
21 that the archdiocese knew about the abuse because I read about
22 it in the San Francisco Examiner. And it said the Archbishop
23 knew. There is a website, Your Honor, called Bishop
24 Accountability. I think its title tells you what it's about.
25 Lots of people go to Bishop Accountability. It has a long list

1 of abusers in every -- in many of the dioceses in the country.
2 I've read Bishop Accountability. Pretty convincing to me. I
3 think the Archbishop knew or I spoke with someone.

4 THE COURT: I read about it; therefore, I think he
5 knew. Okay.

6 MR. STANG: Right.

7 THE COURT: I get it.

8 MR. STANG: Or someone came up to me once and said all
9 those priests -- and I don't personally believe this -- all
10 those priests are molesters. Yeah, yeah, you're pretty
11 credible guy. Yeah, maybe they did.

12 So I really think that if you're looking for a
13 question of did the Archbishop get notice, the appropriate
14 question is did you tell the archbishop or do you know if
15 someone else told the archbishop. And we're fine with that
16 question. And we have circulated a draft version of that
17 question to -- and again, I apologize, but one of the counsel
18 on this call --

19 THE COURT: Okay. Okay.

20 MR. STANG: -- before this hearing started.

21 THE COURT: Well, I'll get a chance to hear from them.

22 But may I clarify something? This is a question that
23 you would rephrase in the confidential questionnaire. And so
24 the answer would say yes, I -- the answer might be I called up
25 the priest and said -- or wrote a letter to the archbishop and

1 told them Father so-and-so did something to me or I told my
2 counselor or my teacher --

3 MR. STANG: My mother.

4 THE COURT: -- or my mother or something. But that
5 doesn't -- I told my mother, but that doesn't say anything
6 about what the writer says that his mother did.

7 MR. STANG: Right. So question I deals with I told my
8 mom.

9 THE COURT: Okay.

10 MR. STANG: The question we are proposing is, do you
11 know if your mom told the archbishop?

12 THE COURT: Okay. And so that -- you would phrase
13 it -- you would phrase it in the alternative, the questionnaire
14 who himself or herself reported it to somebody who's a part of
15 an agent or the -- not the archbishop himself, but someone,
16 someone in authority, or do you know of somebody else who did
17 it.

18 MR. STANG: Yes. We're not limiting I to telling an
19 agent. It's like did you tell anybody. You could have told a
20 friend. You could have told your mom, your dad, anybody. The
21 question is not limited to -- I'm sorry, archbishop agents.

22 THE COURT: Well, do you --

23 MR. STANG: And it's not an alternative question.
24 It's did you tell mom, yes, no. If it's yes, do you know if
25 mom told the archbishop?

1 THE COURT: Yeah. No, I got it. But it's not just
2 Mom. It's anyone.

3 MR. STANG: Well, yeah. Yes. It would be anybody in
4 question. Now in delineated question I says did you tell
5 anyone? And it gives examples. Parents, relatives, friends,
6 the archdiocese. Knowing what you said about that, we'll
7 change that to archbishop. Counselors, law enforcement
8 authorities. And we of course, we use the word "include" which
9 is nonlimiting.

10 THE COURT: Well, that seems reasonable to me. Let me
11 see if any of the insurance counsel who were on the call want
12 to be heard on it. And I mean, maybe one of you could admit to
13 having the conversation with Mr. Stang.

14 MR. FRANKEL: I had I had the conversation with Mr.
15 Stang's partner --

16 THE COURT: Mr. Frankel, okay.

17 MR. FRANKEL: -- earlier today.

18 THE COURT: So is that language acceptable?

19 MR. FRANKEL: Well, I think we've gone back and forth
20 with some language. What I would suggest is I think the key
21 issue here is to establish the archdiocese's independent
22 liability as opposed to the abuser. Our view is and the
23 archdiocese's view has been that the claimant has to show that
24 the -- that there was some prior knowledge of the abuser's
25 propensity to commit the abuse at the time. And without that,

1 there are additional defenses.

2 I think we could work out something that's acceptable
3 between Mr. Stang and the insurers and the debtor. And rather
4 than spend more time today wordsmithing, I think the problem
5 with this language is it seems a little bit too narrow, but
6 we're kind of headed in a similar direction.

7 So unless Your Honor wants to spend the time to
8 wordsmith it now, my suggestion is we try to work this out,
9 send it to Mr. Pascuzzi after we meet and confer, and we can
10 probably come to a --

11 THE COURT: Well, I'm not a big fan of drafting by
12 committee on the public with everybody participating. And I
13 really mean when I say I'm not trying to second guess any of
14 you that I know better language. I accepted from the papers
15 filed by the insurers something that seemed right and a good
16 idea. And Mr. Stang, in my mind, has improved on it. Mr.
17 Frankel, I'll take you up on your proposal and not take the
18 time on this hearing on the public record. I will encourage
19 you and Mr. Stang and any of your cocounsel here who are
20 participating in the hearing or not on the hearing to come up
21 with some agreed language.

22 And Mr. Pascuzzi, I presume that you're indifferent to
23 it if you can a consensus among these counsel on how to --
24 because, again, we're talking about something that goes into
25 the very document that is going to have very limited

1 circulation and disclosure but serves the purposes. Okay.

2 MR. FRANKEL: That sounds fine, Your Honor. We'll try
3 and come up with something.

4 THE COURT: I'm confident that you will. I really --
5 I don't -- I don't think it's -- I don't enjoy these long, long
6 hearings when we're trying to come up with some solution and
7 I'm kind of in the dark.

8 So we can call it a day unless there's something else
9 you want to cover. And I'll -- we'll take a break again for
10 everybody's convenience but only if we're going to resume for
11 any more meaningful amount of time. So you're good to go?

12 MR. PASCUZZI: Your Honor, what I would say is we made
13 the revisions that your tentative ruling requested, the adding
14 caption, different things like that. I think they're are
15 pretty much noncontroversial. I didn't have anything else that
16 I was aware of that there were issues. I don't know if the
17 committee or the insurers do though.

18 THE COURT: Okay. Well, let's start with the
19 committee.

20 Mr. Stang, are you satisfied with where things stand
21 and with the one issue that needs to be resolved, consistent
22 with what we just talked about?

23 MR. STANG: Your Honor, we are done.

24 THE COURT: Okay. And all three counsel who have been
25 active, anybody want to raise anything further?

1 MS. SUGAYAN: Your Honor, we're done as well. And as
2 far as the language that you suggested for J, we can accept
3 that. But we're willing to work with Mr. Stang if he wants to
4 tweak it.

5 THE COURT: Well, what Mr. Stang read to me sounded to
6 be more effective, but I'll defer to you all. Okay.

7 Then does anyone on the call who is entitled to be
8 heard wish to be heard today? Raise your hand and I'll call on
9 you.

10 MR. WEISS: Nothing further, Your Honor.

11 THE COURT: I'm sorry. What did you say, Mr. Weiss?

12 MR. WEISS: I said nothing further.

13 THE COURT: Yeah. No, no. I meant I was -- I wasn't
14 looking to the three of you. I was looking to see -- we have
15 these new rules that drive me crazy on who can participate in
16 these video hearings and who can't. And I'm supposed to follow
17 what they tell me at headquarters, but I don't always agree
18 with what they tell me.

19 Okay. Thank you all for your very, very helpful
20 contributions, the hard work going on everyone's side. And I'm
21 trying to keep up with you. And I appreciate the full
22 explanations and education on this about the right thing to do.
23 And I'm not going to worry about at least one hopefully minor
24 difference between this case and the one in the north counties,
25 North Bay across the Golden Gate Bridge. I'll let Mr. Pascuzzi

1 worry about those differences. And Mr. Pascuzzi and Mr. Stang,
2 I hope your predictions are such that the turnout and the
3 response level in the confidential supplement is helpful for
4 the process.

5 So I will conclude the hearing. I will look forward
6 to either further dispute or further resolution of the 2004
7 dispute with you all at the hearing on November 30th and call
8 it a day. Have a nice evening, everyone. And thank you to the
9 staff also for facilitating the hearing today.

10 IN UNISON: Thank you, Your Honor.

11 (Whereupon these proceedings were concluded at 3:59 PM)
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C E R T I F I C A T I O N

I, Michael Drake, certify that the foregoing transcript is a true and accurate record of the proceedings.

A handwritten signature in dark ink, appearing to read "Michael Drake", is written above a horizontal line.

/s/ MICHAEL DRAKE, CER-513, CET-513

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